Def
Argued and B
481 - Oct 20,
21, 22.

Judge Davis
2 Otto 760

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~763.~~ 471

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY,
APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED DECEMBER 10, 1874.

Affirmed —

Davis Swayne

SUPREME COURT OF THE UNITED STATES.

No. 763.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Exhibit A to bill	11	5
B to bill	68	28
C to bill	100	42
D to bill	135	56
Chancery subpœna	161	66
Acceptance of service of subpœna	162	67
Appearance of defendant	163	67
Answer of M., K. and T. R. R. Co. to bill	164	68
Replication to answer	179	73
Deposition of John W. Scott	181	74
Copy of indenture between A., T and S. F. R. R. and U. P. R. W	182	75
Copy of mortgage from U. P. R. W. to Russell Sage	188	78
Copy of resolution of board of directors U. P. R. W	194	80
Stipulation	196	81
Case taken under advisement	198	82
Decree	199	82
Bond for appeal	201	84
Judge Miller's opinion	204	84
Clerk's certificate	218	90

1 In the circuit court of the United States for the district of Kansas.

THE UNITED STATES, COMPLAINANT,
vs.
MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, defendant. } In equity.

Be it remembered that on the 25th day of February, A. D. 1874, the said complainant filed in the clerk's office of said court its bill of complaint, and Exhibits A, B, C and D, in the above-entitled case, which said bill of complaint and exhibits thereto and endorsements thereon are in the words and figures following, to wit:

Bill.

In the circuit court of the United States for the district of Kansas, eighth circuit.

To the judges of the circuit court of the United States for the district of Kansas:

Your orator, The United States of America, brings this its bill against the Missouri, Kansas and Texas Railway Company, a corporation organized under the laws of the State of Kansas; and thereupon your orator complains and alleges that on, and for a long time prior to, the 3d day of March, 1863, the Osage tribe or nation of Indians were the owners of, and were in the exclusive possession and actual occupancy of certain lands (hereinafter described by metes and bounds) and had so been
2 the owners of, and in possession of and actual occupancy of the same since the proclamation of the treaty between your orator and the said Indians on the 10th day of November, 1808, which said ownership, possession, and occupancy was fully guaranteed to said Indians by the terms and stipulations of a treaty made and proclaimed between the same contracting parties on the 29th day of September, 1825, which said last mentioned treaty reserved said lands to and for said Indians so long as they might choose to occupy the same, the lands herein mentioned are bounded and described in said last-mentioned treaty as follows, to wit: "Beginning at the southeast corner of their present reservation and running thence north with the eastern boundary thereof fifty miles to the northeast corner; thence west with the northern line thirty miles; thence south fifty miles to the southern boundary of their said reservation; thence east with the southern boundary of their said reservation to the place of beginning," containing nine hundred and sixty thousand of land, being the land now embraced in the counties of Neosho and Labette, and a part of the counties of Bourbon, Crawford, Allen, Wilson, and Montgomery in the State of Kansas.

Your orator alleges that the said tribe or nation of Indians remained and continued in such possession and occupancy of said land until after the 21st day of January 1867, when such possession and occupancy were surrendered to your orator in trust for certain purposes hereinafter mentioned. And your orator further alleges that, on the
3 29th day of September, 1865, the said Indians, owning other lands besides those hereinbefore described, and having more lands than were then necessary for their occupation, and all payments to them under former treaties with your orator having ceased, made another treaty with your orator, which said treaty, by its terms, was not to go into effect until its ratification should by advised by the Senate of the

United States and proclaimed by the President; which proclimation, after said ratification, took place on the 21st day of January, 1867; which said treaty is now subsisting unchanged and unrepealed between your orator and the said tribe or nation of Indians. Your orator charges that by the terms of the first article of the said treaty, your orator advanced to the said Indians the sum of three hundred thousand dollars, and the said Indians conveyed and ceded the said lands hereinbefore described to your orator, in trust for the following purposes, that is to say, your orator was to survey and sell the said lands as the public lands of the United States are surveyed and sold, on the most advantageous terms, for cash, and out of the proceeds of such sale it was and is provided: "After re-imbursing the United States the cost of said survey and sale, and the said sum of three hundred thousand dollars placed to the credit of said Indians, the remaining proceeds of the sales shall be placed in the Treasury of the United States to the credit of the civilization-fund, to be used under the direction of the Secretary of the Interior for the education and civilization of Indian tribes
4 residing within the limits of the United States," and your orator took no other title to the said lands than the naked legal title clothed with the trust above specified; and your orator avers that Congress has, from time to time, appropriated the money to pay the annual interest upon the said three hundred thousand dollars stipulated and agreed to be placed in the Treasury of the United States in the first article of the said treaty of September 29th, 1865, proclaimed January 21st, 1867.

Your orator further shows to the court, and alleges that in execution of the trust contained in said treaty, the Congress of the United States, on the 10th day of April, 1869, passed a joint resolution for directing the sale and disposition of said lands, so described herein as aforesaid; that under said joint resolution of Congress, and under the regulations prescribed by the Secretary of the Interior, three hundred and fourteen thousand two hundred and twenty (314,220) acres of said described land were sold to actual and bona-fide settlers thereon, and the United States, through its officers of the Interior Department of the Government, received therefor the sum of four hundred and fifty-four thousand and seventy-two and $\frac{10}{100}$ ($454,072 $\frac{10}{100}$) dollars; and your orator charges and avers that the title to the remaining portion of the nine hundred and sixty thousand acres of land hereinbefore described still remains in the United States, subject to the said trust imposed upon it by the first article of the said treaty, proclaimed January 21st, 1867, by and between
5 the United States and the said tribes or nations of Indians.

But now, so it is, may it please your honors, that the said defendant, combining and confederating with divers persons at present unknown to your orator, whose names, when discovered, your orator prays it may be at liberty to insert herein, with apt words to charge them as parties defendant hereto, and contriving now to wrong and injure your orator in the premises, the said defendant denies your orator's interest and title, and the interest and title of the said Indians in and to the land hereinbefore described, and denies the validity of the title of those persons who purchased of your orator a portion of said lands under the joint resolution of Congress of April 10th, 1869. And the defendant sometimes pretends that under a certain act of Congress approved March 3rd, 1863, and another act of Congress, approved July 26th, 1866, a large part, if not all, of the hereinbefore-described land was granted to the State of Kansas to aid in the construction of certain railroads, among which the said defendant claims was included the

railroad of the said defendant, to wit, the Missouri, Kansas and Texas Railway; and the defendant claims that by virtue of said last-mentioned acts of Congress, and a certain act of the legislature of Kansas approved February 9th, 1864, and a certain other act of the legislature of Kansas approved February 23d, 1866, and by virtue of certain
6 patents hereinafter particularly described, the said defendant claims that it owns a large portion of the said lands hereinbefore described, including part of the lands disposed of as aforesaid under the joint resolution of Congress of April 10th, 1869, whereas your orator charges the contrary thereof to be the truth; that the said land hereinbefore described and included in the first article of said last-mentioned treaty is not included in any or either of said grants of land to the State of Kansas, but is expressly excluded from the operation of said grants, and each of them; that one of the acts which the said defendant claims grants this land to the State of Kansas was passed March 3d, 1863, and is entitled "An act for a grant of lands to the State of Kansas, in alternate sections, to aid in the construction of certain railroads and telegraphs in said State." And your orator avers that no such railroad has been built by the said defendant as was required by said last-mentioned act in order to entitle said defendant to take lands under such act. And your orator further charges that neither the State of Kansas nor the defendant ever made any claim to the said Osage lands described in the first article of said last-mentioned treaty, under the said act of March 19th, 1863, until long after the 21st day of January, 1867, and the lines and routes of said railroad were definitely fixed long prior to that time. And your orator further alleges that on the
7 26th day of July, 1866, Congress passed another act granting lands to the State of Kansas to aid in the construction of the Union Pacific Railway, south branch, from Fort Riley to the south line of the State; that the name of said railway has since been changed to the Missouri, Kansas and Texas Railway, and is the railroad of the said defendant; that the said grant contained in the said act of July 26th, 1866, embraced the odd sections on each side of the line of said road for ten miles, with an indemnity grant beyond this of ten miles more along the granted limits, but selections of indemnity lands in said grant was not confined to odd sections. Your orator avers that said defendant and the Leavenworth, Lawrence and Galveston Railroad Company have each built railroads to the south line of the State of Kansas, which said railroads cross each other at or near the north boundary of said lands mentioned in said first article of said treaty, and run nearly parallel with each other through said lands.

Your orator further avers that the governor of the State of Kansas certified that any section of ten consecutive miles or any other portion of said road was completed in a good, substantial, and workmanlike manner as a first-class railroad, but the only certificate made by the said governor was in the words and figures following, to wit:

"EXECUTIVE OFFICE,
"*Topeka, Kansas, July 3d*, 1870.

"I, James M. Harvey, governor of the State of Kansas, do
8 hereby certify that this map and profile of the Union Pacific Railway Company, southern branch, now known as the Missouri, Kansas and Texas Railway Company, has been filed in my office by the said railroad company, and shows that portion of the said railroad commencing at Junction City, at or near the center of section twelve, (12,) town. twelve (12) south, range five (5) east, and ending at the southern line of

the State of Kansas, at a point three thousand five hundred and ten (3,510) feet east of the 27-mile post or mound, and one thousand seven hundred and eighty-four (1,784) feet west of the twenty-sixth (26) mile post or mound on said southern line of the State of Kansas, which has been completed and equip'ed as required by the acts of Congress granting lands to the State and to the said railroad company, approved March 3d, 1863, July 1st, 1864, and July 26th, 1866, and the act of the legislative assembly of the State of Kansas approved February 9th, 1864, entitled "An act to accept a grant of lands made to the State of Kansas by the Congress of the United States, to aid in the construction of certain railroads and telegraphs in said State, and to apply the same to construction of said roads and telegraphs.

"In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of state. Done at Topeka this 13th day of July, 1870.

[SEAL.] "JAMES M. HARVEY, *Governor.*

"THOMAS MOONLIGHT,
"*Secretary of State.*"

9 And your orator further charges that, upon the receipt of the said certificate, so made by the said governor as aforesaid, the Secretary of Interior caused patents to be issued to the defendant for the lands described by odd sections for ten miles each on side of the track of said railroad through said lands mentioned and described by odd sections, for ten miles on each side of the track of said railroad through said lands mentioned and described in the said first article of the treaty last aforesaid, together with a large number of acres of land designated by odd and even sections, and selected by said defendant as indemnity lands in place of lands which the United States had sold, or to which the right of pre-emption or homestead settlement had attached, or which had been reserved by the United States before the definate location of said railroad, and which said lands are included within the limits of twenty miles on each side of said road, and are part and parcel of said lands described in the first article of the said last-mentioned treaty; certified copies of which patents are hereto annexed, marked Exhibits A, B, C, & D, respectively. And your orator prays that said copies may be taken and considered as part of this its bill of complaint. And your orator charges that the said patents so issued as aforesaid were issued without authority of law, are null and void, and contrary to
10 equity and to the manifest wrong and injury of your orator. In consideration whereof, and forasmuch as your orator can only have adequate relief in the premises in this honorable court, where matters of this nature are properly cognizable and relievable, your orator prays that this honorable court may order, adjudge, and decree that the legal title in and to the said lands claimed as aforesaid by the said defendant, and included within the limits of the said tract of land above described in the first article of the said treaty proclaimed January 21st, 1867, between the Osage tribe of Indians and your orator, is vested in your orator, and of right belongs to your orator in trust for the uses and purposes specified in said first article of said treaty, and that the said patents to the said defendants, for a portion of said lands described in the said first article of said treaty, and marked Exhibits A, B, C, and D, respectively, be decreed to be null and void and without authority of law, and that they constitute a cloud on the said legal title of your orator, and that the same be removed, and that the said defendant be perpetually enjoined from setting up any claim either in law or equity

in or to any of said lands situate, lying, and being within the boundaries of said Osage ceded lands, described as aforesaid in said first article of said treaty with the said Osage tribe of Indians, and that your
11 orator may have such other and further relief in premises as the nature of the circumstances of this case may require and to this honorable court may seem meet.

And may it please your honors to grant to your orator a writ of subpœna *at* the United States of America, issuing out of and under the seal of this honorable court, directed to the Missouri, Kansas and Texas Railway Company, defendant, commanding it on a day certain therein to be named, and under a certain penalty, to be and appear in the honorable court then and there to answer all and singular the premises, and to stand to and perform and abide such further order, direction, and decree as may be made against it.

And your orator, as in duty bound, will ever pray, &c.

GEO. R. PECK,
United States Attorney, District of Kansas,
Complainant's Solicitor.

WILSON SHANNON and
MCCOMAS & MCKEEGANS,
Of Counsel.

EXHIBIT A.

United States of America, to all whom these presents may come, greeting:

Whereas by the act of Congress approved July 26th, 1866, entitled "An act granting lands to the State of Kansas to aid in the construction of a southern branch of the Union Pacific Railway and Telegraph from Fort Riley, Kansas, to Fort Smith, Arkansas," authority is given to the Union Pacific Railway, southern branch, now known as the Missouri, Kansas and Texas Railway Company of Kansas, a
12 corporation existing under the laws of said State, to construct a railroad and telegraph line, under certain conditions and stipulations as expressed in said act; and provision is made for granting to the State of Kansas, for the use and benefit of said railroad company, every alternate section of land designated by odd numbers to the extent of five alternate sections per mile on each side of said road, and not exceeding in all ten sections per mile.

And whereas it is further enacted that, in case it shall appear that the United States have, when the line of said road is definitely located, sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, then so much land is set apart, to be selected for the purposes aforesaid nearest to the sections above specified; provided "that said lands hereby granted as indemnity shall not be selected beyond twenty miles from the line of said road."

And whereas it is further enacted by the 3d section of the aforesaid acts that where the governor of the State of Kansas shall certify that any section of ten consecutive miles of said road is completed in a good, substantial, and workmanlike manner as a first-class railroad, patents shall be issued to said company for the lands thereby granted.

And whereas it is indicated by letter of the Secretary of the Interior to the Commissioner of the General Land-Office, dated July 25th,
13 1870, and map therewith duly certified by the governor of the

State of Kansas, that the said Missouri, Kansas and Texas Railway Company has fully completed and equipped, as required by the acts, the said railroad from Junction City to the southern boundary of the State of Kansas; and whereas certain tracts have been selected under the act aforesaid by Isaac J. Goodnow, land commissioner of the Missouri, Kansas and Texas Railway Company, as shown by the original list of selection, dated June 29th, 1871, certified under said date by the register and receiver at Humboldt, Kansas, the said tracts being described as follows, to wit:

South of base line and east of the sixth principal meridian, Kansas.

TOWNSHIP TWENTY-NINE, RANGE TWENTY.

South half of southwest quarter of section three, containing eighty acres. Lot number five of section fifteen, containing thirty-nine acres and eighty hundredths of an acre. Southeast quarter of southwest quarter of section fifteen, containing forty acres. North half of southwest quarter, and lots numbered three, four, and five of section twenty-three, containing one hundred and fifty-one acres and thirty hundredths of an acre. South half of northeast quarter, south half of southwest quarter, and southeast quarter of section twenty-seven, containing three hundred and twenty acres.

TOWNSHIP THIRTY, RANGE TWENTY.

14 West half of southwest quarter, and lots numbered eight, ten, and eleven of section one, containing one hundred and seventy-five acres and eighty hundredths of an acre. Lots numbered one, two, three, four, south half of northeast quarter, and south half of
15 northwest quarter, and southwest quarter, and southeast quarter of section three, containing four hundred and seventy-eight acres and fifty-six hundredths of an acre. Southwest quarter of northeast quarter, west half of southeast quarter, and southeast quarter of southeast quarter of section nine, containing one hundred and sixty acres. Northwest quarter and southeast quarter of section eleven, containing three hundred and twenty acres. Lots numbered one, two, three, and five, southwest quarter of northeast quarter, and southwest quarter of section thirteen, containing three hundred and twenty-five acres and ninety hundredths of an acre. West half of section, and southeast quarter, of section fifteen, containing four hundred and eighty acres. Southeast quarter of section twenty-one, containing one hundred and sixty acres. Southwest quarter and east half of section twenty-three, containing four hundred and eighty acres. South half of northwest quarter, and south half of section twenty-five, containing four hundred acres. All of section twenty-seven, containing six hundred and forty acres. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

16 TOWNSHIP THIRTY-ONE, RANGE TWENTY.

Lots numbered one and four, southeast quarter of northeast quarter, southwest quarter of northwest quarter, and southwest quarter of section one, containing three hundred and twenty-one acres and four hundredths of an acre. All of section three, containing six hundred and forty-two acres and fifty-six hundredths of an acre. Lot number one, and south-

east quarter of northeast quarter of section five, containing eighty acres and sixteen hundredths of an acre. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. Northeast quarter and southwest quarter of section thirteen, containing three hundred and twenty acres. All of section fifteen, containing six hundred and forty acres. East half of northeast quarter, and east half of southeast quarter of section seventeen, containing one hundred and sixty acres. All of section twenty-one, containing six hundred and forty acres. Southwest quarter and north half of section twenty-three, containing four hundred and eighty acres. Northeast quarter and south half of section twenty-five, containing four hundred and eighty acres. South half of section twenty-seven,
17 containing three hundred and twenty acres. Northeast quarter and southwest quarter of section thirty-three, containing three hundred and twenty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY-TWO, RANGE TWENTY.

Lots numbered one, two, three, and four, south half of northeast quarter, south half of northwest quarter, and southwest quarter of section one containing four hundred and eighty-one acres and six hundredths of an acre. All of section three, containing six hundred and forty-one acres and forty-four hundredths of an acre. Northeast quarter of section nine, containing one hundred and sixty acres. Southeast quarter and north half of section eleven, containing four hundred and eighty acres. All of section thirteen, containing six hundred and forty acres. Northeast quarter and north half of southeast quarter of section fifteen, containing two hundred and forty acres. Southeast quarter and west half of section twenty-one, containing four hundred and eighty acres. Southwest quarter and north half of section twenty-three, containing four hundred and eighty acres. All of section twenty-five, containing six hundred and forty acres. South half of northeast quarter and northwest
18 quarter of section twenty-seven, containing two hundred and forty acres. Northeast quarter of section thirty-five, containing one hundred and sixty acres.

TOWNSHIP THIRTY-THREE, RANGE TWENTY.

Lots numbered three and four, south half of northwest quarter and south half of section one, containing four hundred and seventy-eight acres and ninety-seven hundredths of an acre. Southwest quarter and southwest quarter of northeast quarter of section three, containing two hundred acres. East half of northwest quarter, east half of southwest quarter, and east half of section nine, containing four hundred and eighty acres. North half of northeast quarter, southwest quarter and south half of southeast quarter of section eleven, containing three hundred and twenty acres. Southwest quarter and north half of section thirteen, containing four hundred and eighty acres. North half of section, southwest quarter east half of southeast quarter, and northwest quarter of southeast quarter of section fifteen, containing six hundred acres. East half of northwest quarter, east half of southwest quarter, and east half of section twenty-one, containing four hundred and
19 eighty acres. Southeast quarter and west half of section twenty-three, containing four hundred and eighty acres. Southeast quarter and north half of section twenty-five, containing four hundred

and eighty acres. All of section twenty-seven, containing six hundred and forty acres. East half of northeast quarter and east half of southeast quarter of section twenty-nine, containing one hundred and sixty acres. Southwest quarter and north half of section thirty-three, containing four hundred and eighty acres. Southwest quarter and north half of section thirty-three, containing four hundred and eighty acres. Southwest quarter of section thirty-five, containing one hundred and sixty acres.

TOWNSHIP THIRTY-FOUR, RANGE TWENTY.

Lot number four of section one, containing forty acres and twenty-one hundredths of an acre. Lots numbered one and two, and south half of northeast quarter of section three, containing one hundred and fifty-nine acres and eighty-eight hundredths of an acre. Lot number one, and southeast quarter of northeast quarter, and east half of southeast quarter of section five, containing one hundred and sixty acres and forty-six hundredths of an acre. West half of northwest quarter, southwest quarter, west half of southeast quarter, and southeast
20 quarter of southeast quarter of section nine, containing three hundred and sixty acres. East half of northeast quarter, northwest quarter of northeast quarter, south half of southwest quarter, and southeast quarter of section eleven, containing three hundred and sixty acres. Southwest quarter of section thirteen, containing one hundred and sixty acres. North half of northwest quarter, southwest quarter of northeast quarter, south half of southwest quarter, and southeast quarter of section fifteen, containing three hundred and sixty acres. East half of northwest quarter, east half of southwest quarter, and east half of section seventeen, containing four hundred and eighty acres. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres. Northeast quarter of section twenty-five, containing one hundred and sixty acres. All of section twenty-seven, containing six hundred and forty acres. Northeast quarter east half of northwest quarter, southwest quarter of northwest quarter, and south half of section twenty-nine, containing six hundred acres. East half of northeast quarter, and east half of southeast quarter of section thirty-one, containing one hundred and sixty acres. All of section thirty-three, containing six hun-
21 dred and forty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY-FIVE, RANGE TWENTY.

Lots numbered one and two of section one, containing eighty-one acres and twelve hundredths of an acre. Lots numbered one and two of section three, containing ninety acres and eighty hundredths of an acre. Lots numbered one and two of section five, containing one hundred acres and forty-eight hundredths of an acre.

TOWNSHIP THIRTY, RANGE TWENTY-ONE.

Southwest quarter of section five, containing one hundred and sixty acres. Northeast quarter and southeast quarter of section seven, containing three hundred and eighteen acres. Northwest quarter of section seventeen, containing one hundred and sixty acres. Lots numbered four and five of section nineteen, containing one hundred and four acres and sixty hundredths of an acre. West half of southwest quarter and

east half of southeast quarter of section twenty-one, containing one hundred and sixty acres. Lots numbered seven and eight of section twenty-nine, containing seventy-eight acres. All of section thirty-one, containing six hundred and forty acres. North half of northeast quarter, east half of northwest quarter, northwest quarter of northwest quarter, and lots numbered one, two, three, and four of section
22 thirty-three, containing three hundred and eighty acres and forty hundredths of an acre. East half of northwest quarter, and west half of southwest quarter of section thirty-five, containing one hundred and sixty acres.

TOWNSHIP THIRTY-ONE, RANGE TWENTY-ONE.

South half of southwest quarter of section three, containing eighty acres. East half of southwest quarter and southeast quarter of section five, containing two hundred and forty acres. West half of northeast quarter, east half of northwest quarter, east half of southwest quarter, southeast quarter, and lots numbered one, two, three, and four of section seven, containing five hundred and forty-one acres and thirty hundredths of an acre. Lots numbered two and three northeast quarter of southwest quarter, and east half of southeast quarter of section nine, containing two hundred and twenty-five acres and ten hundredths of an acre. Lot number one, and west half of southwest quarter of section eleven, containing one hundred and eleven acres and thirty hundredths of an acre. East half of southwest quarter and west half of southeast quarter of section fifteen, containing one hundred and sixty acres. East half of southwest quarter and southeast quarter of section number seventeen, containing two hundred and forty acres. West half of northeast quarter, northeast quarter of northwest quarter, southeast quarter of southwest
23 quarter, and lots numbered one and four of section nineteen, containing two hundred and thirty-one acres and sixty-two hundredths of an acre. Lot number two east half of northwest quarter, and southwest quarter of section twenty-one, containing two hundred and sixty-four acres and sixty-eight hundredths of an acre. Lot number one of section twenty-three, containing thirty-three acres and ninety-six hundredths of an acre. Northeast quarter of northeast quarter, southeast quarter of southwest quarter, and southwest quarter of southeast quarter of section twenty-seven, containing one hundred and twenty acres. Northwest quarter of section twenty-nine, containing one hundred and sixty acres. South half of northeast quarter and southeast quarter of section thirty-one, containing two hundred and forty acres. Lots numbered one, two, six, eight, nine, and ten northwest quarter, west half of southwest quarter, and northeast quarter of southwest quarter of section thirty-three, containing four hundred and fifty-four acres and nineteen hundredths of an acre. Southwest quarter and lot number two of section thirty-five, containing one hundred and ninety-seven acres and forty-two hundredths of an acre.

TOWNSHIP THIRTY-TWO, RANGE TWENTY-ONE.

Lots numbered two, three, four, and five, and south half of northwest quarter of section three, containing two hundred and thirty-nine
24 acres and seventy-two hundredths of an acre. Lots numbered one, two, three, and four south half of northeast quarter, south half of northwest quarter, and southeast quarter of section five, containing four hundred and eighty acres and eighty-two hundredths of an acre. East half of northwest quarter, and lots numbered one and two

of section seven, containing one hundred and fifty-two acres and sixty-nine hundredths of an acre. Southwest quarter, and lot number two of section eleven, containing two hundred acres and eleven hundredths of an acre. Northeast quarter of section fifteen, containing one hundred and sixty acres. Southwest quarter and south half of southeast quarter of section seventeen, containing two hundred and forty acres. Southeast quarter of southeast quarter of section nineteen, containing forty acres. Lots numbered one, four, and five, and northwest quarter of northeast quarter of section twenty-one, containing one hundred and thirty-one acres and thirty hundredths of an acre. Lot number one and southwest quarter of section twenty-three, containing two hundred and two acres and eighteen hundredths of an acre. Lots numbered one and two, and southeast quarter of section twenty-seven, containing two hundred and thirty-five acres and ninety hundredths of an acre. Northeast quarter east half of northwest quarter, southwest quarter, and north half of south-
25 east quarter of section twenty-nine, containing four hundred and eighty acres. All of section thirty-one, containing six hundred and thirty-one acres and four hundredths of an acre. Lots numbered one, five, six, and eight, and north half of northwest quarter of section thirty-three, containing two hundred and twenty-four acres and ninety hundredths of an acre. Lots numbered one and two, and northwest quarter and southwest quarter of section thirty-five, containing four hundred and ten acres and forty-eight hundredths of an acre.

TOWNSHIP THIRTY-THREE, RANGE TWENTY-ONE.

Lots numbered one, two, three, four, five, and six, and south half of northeast quarter; southeast quarter of northwest quarter; east half of southwest quarter, and southeast quarter of section three, containing five hundred and forty-six acres and sixty-three hundredths of an acre. Southeast quarter of section five, containing one hundred and sixty acres. Southeast quarter of section seven, containing one hundred and sixty acres. Lots numbered one, two, six, and seven, and southwest quarter of section nine, containing two hundred and ninety-six acres and forty hundredths of an acre. West half of northwest quarter, southwest quarter, and lots number two of section eleven, containing two hundred and eighty-eight acres and thirty hundredths of an acre.
Lots numbered two, four, five, southwest quarter of section fifteen,
26 containing one hundred and fifty-seven acres and forty hundredths of an acre. Northeast quarter, east half of northwest quarter, and northeast quarter of southwest quarter, and north half of southeast quarter, and lots numbered three and four in section nineteen, containing four hundred and thirty-eight acres and twenty-three hundredths of an acre. Southwest quarter and east half of section twenty-seven, containing four hundred and eighty acres. East half of northwest quarter, southwest quarter of northwest quarter, east half of southwest quarter, and southeast quarter of section twenty-nine, containing three hundred and sixty acres. Southeast quarter of section thirty-one, containing one hundred and sixty acres. West half of southeast quarter of section thirty-three, containing eighty acres. Lot number eight of section thirty-five, containing forty-seven acres and thirty hundredths of an acre.

TOWNSHIP THIRTY-FOUR, RANGE TWENTY-ONE.

Southwest quarter of northwest quarter, and northwest quarter of southeast quarter of section three, containing eighty acres. Southeast quarter of section five, containing one hundred and sixty

acres. East half of section seven, containing three hundred and twenty acres. West half of northeast quarter, southeast quarter of northeast quarter, northwest quarter, north half of southwest quarter, and southeast quarter of section nine, containing
27 five hundred and twenty acres. East half of northwest quarter, and northwest quarter of northwest quarter of section eleven, containing one hundred and twenty acres. West half of northwest quarter, west half of southwest quarter, southeast quarter of southwest quarter, and southwest quarter of southeast quarter of section fifteen, containing two hundred and forty acres. Northeast quarter and west half of southeast quarter, of section seventeen, containing two hundred and forty acres. East half of section twenty-one, containing three hundred and twenty acres. Southwest quarter of northwest quarter, southwest quarter, and lot number six of section twenty-three, containing two hundred and fifty-nine acres and eighteen hundredths of an acre. West half of northwest quarter, the northeast quarter of the northwest quarter, and west half of southeast quarter of section twenty-seven, containing two hundred acres. South half of section twenty-nine, containing three hundred and twenty acres. All of section thirty-one, containing six hundred and forty acres and sixty-eight hundredths of an acre. Northeast quarter, north half of northwest quarter, south half of southwest quarter of section thirty-three, containing three hundred and twenty acres. Lot number six of section thirty-five, containing thirty acres and fifty-two hundredths of an acre.

28 TOWNSHIP THIRTY-FIVE, RANGE TWENTY-ONE.

Lots numbered one and two of section five containing seventy acres.

South of base-line and east of sixth principal meridian, Kansas—twenty-mile indemnity limits.

TOWNSHIP TWENTY-NINE, RANGE SEVENTEEN.

Lot number two of section thirty-two, containing thirty-nine acres and eighty-seven hundredths of an acre.

TOWNSHIP THIRTY, RANGE SEVENTEEN.

Lots numbered one and two, and east half of section eight, containing three hundred and ninety-six acres and four hundredths of an acre. Lots numbered one and two and southeast quarter of section twenty, containing two hundred and twenty-one acres and forty-eight hundredths of an acre. All of section twenty-two, containing six hundred and forty acres. All of section twenty-eight, containing six hundred and forty acres. Lots numbered one and two, and east half of section thirty-two, containing three hundred and eighty-seven acres and sixteen hundredths of an acre. All of section thirty-four, containing six hundred and forty acres.

TOWNSHIP TWENTY-ONE, RANGE SEVENTEEN.

Lots numbered two, three, four, south half of northeast quarter, south half northwest quarter, and south half of section two, containing six hundred and four acres and seventy-seven hundredths of an acre.
29 All of section four, containing six hundred and forty acres and

forty-two hundredths of an acre. Lots numbered one, two, three, four, and east half of section eight, containing five hundred and forty-two acres and ninety-four hundredths of an acre. All of section ten, containing six hundred and forty acres. West half of northeast quarter, west half of southeast quarter, and west half of section twelve, containing four hundred and eighty acres. All of section fourteen, containing six hundred and forty acres. Lots numbered one, two, three, four, and southeast quarter of section twenty, containing three hundred and seventy-nine acres and twenty hundredths of an acre. All of section twenty-two, containing six hundred and forty acres. All of section twenty-four, containing six hundred and forty acres. All of section twenty-six, containing six hundred and forty acres. All of section twenty-eight, containing six hundred and forty acres. Lots numbered one, two, three, four, and east half of section thirty-two, containing five hundred and thirty-one acres and thirty-six hundredths of an acre. All of section thirty-four, containing six hundred and forty acres.

TOWNSHIP TWENTY-TWO, RANGE SEVENTEEN.

All of section two, containing six hundred and forty acres and four hundredths of an acre. All of section four, containing six hundred
30 and forty acres and fifty-eight hundredths of an acre. Lots numbered one, two, three, four, and east half of section eight, containing five hundred and twenty-two acres and seventy-eight hundredths of an acre. All of section ten, containing six hundred and forty acres. All of section twelve, containing six hundred and forty acres. All of section fourteen, containing six hundred and forty acres. Lots numbered one, two, three, four, and east half of section twenty, containing five hundred and twenty acres and thirty-eight hundredths of an acre. All of section twenty-two, containing six hundred and forty acres. North half of section, east half of southwest quarter, southeast quarter of section twenty-four, containing five hundred and sixty acres. North half of northwest quarter, south half of southeast quarter of section twenty-six, containing one hundred and sixty acres. All of section twenty-eight, containing six hundred and forty acres. Lots numbered one, two, three, four, east half of section thirty-two, containing five hundred and three acres and four hundredths of an acre. East half of section, northwest quarter of northwest quarter and southwest quarter of section thirty-four, containing five hundred and twenty acres.

TOWNSHIP THIRTY-THREE, RANGE SEVENTEEN.

All of section two, containing six hundred and thirty-nine acres and sixty-two hundredths of an acre. Lots numbered three and four
31 and south half of northwest quarter and south half of section four, containing four hundred and seventy-nine acres and eleven hundredths of an acre. East half of northeast quarter and southeast quarter of section eight, containing two hundred and forty acres. All of section ten, containing six hundred and forty acres. All of section twelve, containing six hundred and forty acres. All of section fourteen, containing six hundred and forty acres. All of section twenty-two, containing six hundred and forty acres. East half of northeast quarter, west half of northwest quarter, and south half of section twenty-four, containing four hundred and eighty acres. All of section twenty-six, containing six hundred and forty acres.

TOWNSHIP THIRTY-FOUR, RANGE SEVENTEEN.

All of section two, containing six hundred and forty acres and sixty-four hundredths of an acre. Northwest quarter of northeast quarter, northwest quarter and south half of section twelve, containing five hundred and twenty acres. Northeast quarter, east half of northwest quarter, southwest quarter of northwest quarter, north half of southwest quarter, and north half of southeast quarter of section twenty-four, containing four hundred and forty acres.

TOWNSHIP THIRTY-ONE, RANGE EIGHTEEN.

All of section eighteen, containing six hundred and twenty-one acres and eighteen hundredths of an acre. Northeast quarter
32 of northwest quarter, and lot number one of section thirty, containing seventy-five acres and forty-four hundredths of an acre. Northeast quarter of southwest quarter of section thirty-two, containing three hundred and twenty acres.

TOWNSHIP THIRTY-TWO, RANGE EIGHTEEN.

Lots numbered one, two, three, four, and five. South half of northeast quarter of northwest quarter of section six, containing three hundred and twelve acres and twenty-seven hundredths of an acre. East half of section eight, containing three hundred and twenty acres. South half of section ten, containing three hundred and twenty acres. Southeast quarter of northeast quarter. Lots numbered one and two, and southeast quarter of northwest quarter of section eighteen, containing one hundred and fifty-three acres and seventy-eight hundredths of an acre. All of section twenty, containing six hundred and forty acres. Northeast quarter and west half of section twenty-two, containing four hundred and eighty acres. North half of section twenty-six, containing three hundred and twenty acres. Northeast quarter and south half of section twenty-eight, containing four hundred and eighty acres. All of section thirty, containing six hundred and twenty-eight acres and ninety-eight hundredths of an acre. All of section thirty-two, containing six hundred and forty acres. Northwest quarter and south half
33 of section thirty-four, containing four hundred and eighty acres.

TOWNSHIP TWENTY-THREE, RANGE EIGHTEEN.

All of section two, containing six hundred and forty-one acres and sixty-three hundredths of an acre. All of section four, containing six hundred and forty acres and eighty-eight hundredths of an acre. All of section six, containing six hundred and twenty-eight acres and twenty-four hundredths of an acre. All of section eight, containing six hundred and forty acres. Northwest quarter and south half of section ten, containing four hundred and eighty acres. All of section twelve, containing six hundred and forty acres. All of section fourteen, containing six hundred and forty acres. All of section eighteen, containing six hundred and thirty-two acres and ninety-six hundredths of an acre. North half of section and southeast quarter of section twenty, containing four hundred and eighty acres. All of section twenty-two, containing six hundred and forty acres. All of section twenty-four, containing six hundred and forty acres. All of section twenty-six, containing six hundred and forty acres. Northwest quarter of northeast

quarter, and west half of section west half of southeast quarter, and southeast quarter of southeast quarter of section twenty-eight, containing four hundred and eighty acres. All of section thirty, con-
34 taining six hundred and thirty-five acres and seventy-eight hundredths of an acre. All of section thirty-two, containing six hundred and forty acres. All of section thirty-four, containing six hundred and forty acres.

TOWNSHIP THIRTY-FOUR, RANGE EIGHTEEN.

All of section two, containing six hundred and forty acres and twenty-four hundredths of an acre. All of section four, containing six hundred and thirty-eight acres and ninety-four hundredths of an acre. Lots numbered one, two, three, four, five, six, seven, southwest quarter of northeast quarter, southeast quarter of northwest quarter, east half of southwest quarter, and southeast quarter of southeast quarter of section six, containing four hundred and seventy-eight acres and sixty-four hundredths of an acre. All of section eight, containing six hundred and forty acres. All of section ten, containing six hundred and forty acres. All of section twelve, containing six hundred and forty acres. All of section fourteen, containing six hundred and forty acres. All of section eighteen, containing six hundred and thirty-eight acres and eight hundredths of an acre. All of section twenty, containing six hundred and forty acres. All of section twenty-two, containing six hundred and forty acres. All of section twenty-four, containing six hundred and forty acres. All of section twenty-six, containing six hundred and
35 forty acres. All of section twenty-eight, containing six hundred and forty acres. Northeast quarter, east half of northwest quarter, lots numbered one, two, three, four, and east half of southwest quarter of section thirty, containing four hundred and seventy-nine acres and eighteen hundredths of an acre. All of section thirty-two, containing six hundred and forty acres. All of section thirty-four, containing six hundred and forty acres.

TOWNSHIP THIRTY-FIVE, RANGE EIGHTEEN.

Lots numbered one, two, three, four, of section two, containing one hundred and twenty-six acres and seventy hundredths of an acre. Lots numbered one, two, three, and four, of section four, containing one hundred and twenty-seven acres and seventy hundredths of an acre.

TOWNSHIP THIRTY-THREE, RANGE NINETEEN.

Lots numbered six and seven, east half of southwest quarter, and southeast quarter of section six, containing three hundred and sixteen acres and sixty-eight hundredths of an acre. All of section eighteen, containing six hundred and thirty-four acres and thirty-eight hundredths of an acre. South half of section twenty, containing three hundred and twenty acres. All of section thirty, containing six hundred and thirty-six acres and six hundredths of an acre. All of section thirty-two, containing six hundred and forty acres.

TOWNSHIP THIRTY-FOUR, RANGE NINETEEN.

Lots numbered two, three, four, southwest quarter of northeast
36 quarter, south half of northwest quarter, southwest quarter, west half of southeast quarter, and southeast quarter of southeast

quarter, of section four, containing five hundred and twenty acres and eighteen hundredths of an acre. All of section six, containing six hundred and thirty-eight acres and nine hundredths of an acre. All of section eight, containing six hundred and forty acres. Southwest quarter of section ten, containing one hundred and sixty acres. West half of section fourteen, containing three hundred and twenty acres. All of section eighteen, containing six hundred and thirty-seven acres and sixty-six hundredths of an acre. All of section twenty, containing six hundred and forty acres. Northeast quarter and west half of section twenty-two, containing four hundred and eighty acres. All of section twenty-six, containing six hundred and forty acres. Northwest quarter of section twenty-eight, containing one hundred and sixty acres. All of section thirty, containing six hundred and thirty-nine acres and eighty-eight hundredths of an acre. All of section thirty-two, containing six hundred and forty acres. North half of section, and southeast quarter of section thirty-four, containing four hundred and eighty acres.

TOWNSHIP THIRTY-FIVE, RANGE NINETEEN.

Lots numbered one, two, three, four, of section two, containing one hundred and twelve acres and thirty hundredths of an acre. Lots
37 numbered one, two, three, four, of section four, containing one hundred and eighteen acres and twenty-two hundredths of an acre. Lots numbered one, two, three, four, of section six, containing one hundred and twenty-four acres and fifty-one hundredths of an acre.

TOWNSHIP TWENTY-SIX, RANGE NINETEEN.

Lots numbered five, six, seven, eight, and east half of southeast quarter of section twenty-six, containing two hundred and eighty-seven acres and seventy hundredths of an acre.

TOWNSHIP TWENTY-SEVEN, RANGE NINETEEN.

Southeast quarter of southeast quarter of section two, containing forty acres. Northeast quarter and south half of section twelve, containing four hundred and twenty acres. North half of northeast quarter and south half of southeast quarter of section twenty-four, containing one hundred and sixty acres.

TOWNSHIP TWENTY-SIX, RANGE TWENTY.

Lots three, four, five, six, and south half of section twenty-six, containing five hundred and fifty-four acres and two hundredths of an acre. Lots number three, four, five, six, and south half of section twenty-eight, containing five hundred and forty-four acres and thirty-two hundredths of an acre. Lots numbered four, six, and eight, southeast quarter of southwest quarter, west half of southeast quarter, and southeast quarter of southeast quarter of section thirty, containing two
38 hundred and ninety-five acres and eighty hundredths of an acre. All of section thirty-two, containing six hundred and forty acres. All of section thirty-four, containing six hundred and forty acres.

TOWNSHIP TWENTY-SEVEN, RANGE TWENTY.

Lots numbered one, two, three, four, south half of northeast quarter, and south half of northwest quarter, west half of southwest quarter,

northeast quarter, southwest quarter, east half of southeast quarter, and northwest quarter of southeast quarter of section two, containing five hundred and sixty-three acres and seventy-two hundredths of an acre. All of section four, containing six hundred and forty-four acres and eighty hundredths of an acre. Lots numbered one, two, five, six, seven, south half of northeast quarter, southeast quarter of the northwest quarter, east half of southwest quarter, and southeast quarter of section six, containing five hundred and fifty-one acres and twenty-seven hundredths of an acre. Northeast quarter and west half of section eight, containing five hundred and eighty acres. North half of northeast quarter, southwest quarter and south half of southeast quarter of section ten, containing three hundred and twenty acres. Northeast quarter and south half of section twelve, containing five hundred and eighty acres. Northeast quarter, east half of northwest quarter, and
39 east half of southeast quarter of section fourteen, containing three hundred and twenty acres. Northeast quarter, east half of northwest quarter, lots numbered one and two, and southeast quarter of section eighteen, containing four hundred and seventy-two acres and nine hundredths of an acre. Northwest quarter and east half of section twenty, containing four hundred and eighty acres. Northwest quarter of section twenty-two, containing one hundred and sixty acres. Northeast quarter, east half of northwest quarter, southwest quarter of northwest quarter, and south half of section twenty-four, containing six hundred acres. Northeast quarter, southeast quarter of northwest quarter, east half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of section twenty-six, containing four hundred and eighty acres. Northeast quarter, east half of northwest quarter, northwest quarter of northwest quarter, and southwest quarter of southwest quarter of section twenty-eight, containing three hundred and twenty acres. East half of southeast quarter of section thirty, containing eighty acres. West half of northwest quarter, and northwest quarter of southwest quarter of section thirty-two, containing one hundred and twenty acres. East half of northeast quarter, southwest quarter of northeast quarter, southwest quarter of
40 southwest quarter, and southeast quarter of section thirty-four, containing three hundred and twenty acres.

TOWNSHIP TWENTY-EIGHT, RANGE TWENTY.

Lots numbered one and two, south half of northeast quarter, and south half of section two, containing four hundred and eighty-one acres and ninety-four hundredths of an acre. Lots numbered one and two, and south half of northeast quarter of section four, containing one hundred and sixty acres and nine hundredths of an acre. Northeast quarter of northwest quarter of section eight, containing forty acres. Northwest quarter of section ten, containing one hundred and sixty acres. West half of section twelve, containing three hundred and twenty acres.

TOWNSHIP TWENTY-SIX, RANGE TWENTY-ONE.

Southwest quarter and west half of southeast quarter of section twenty-eight, containing two hundred and forty acres. Lots numbered three, four, five, six, seven, and eight, east half of northwest quarter, and southeast quarter of section thirty, containing five hundred and forty-seven acres and fifty-three hundredths of an acre. All of section thirty-two, containing six hundred and forty acres.

TOWNSHIP TWENTY-SEVEN, RANGE TWENTY-ONE.

South half of northeast quarter, lots numbered three and four, south half of northwest quarter, and south half of section four, containing five hundred and sixty-one acres and twelve hundredths of an acre.

41 All of section six, containing six hundred and twenty-one acres and seventy-eight hundredths of an acre. All of section eight, containing six hundred and forty acres. All of section ten, containing six hundred and forty acres. All of section eighteen, containing six hundred and twenty-two acres and ninety-eight hundredths of an acre. All of section twenty, containing six hundred and forty acres. All of section twenty-two, containing six hundred and forty acres. Northwest quarter, and lots numbered three and four of section twenty-six, containing two hundred and thirty-three acres and sixty-three hundredths of an acre. Southwest quarter of northeast quarter, west half of northwest quarter, southeast quarter of northwest quarter, and northeast quarter of southeast quarter of section twenty-eight, containing two hundred acres. Northeast quarter, east half of northwest quarter, east half of southwest quarter, southeast quarter, and lots numbered one, two, three, and four of section thirty, containing six hundred and twenty-four acres and seventy-four hundredths of an acre. Northeast quarter, and south half of section thirty-two, containing four hundred and eighty acres. East half of section thirty-four, containing three hundred and twenty acres.

TOWNSHIP TWENTY-EIGHT, RANGE TWENTY-ONE.

Lots numbered six and seven, south half of northeast quarter, and southwest quarter of section two, containing three hundred and

42 twenty acres and seventy-two hundredths of an acre. Lots numbered one and two, and south half of northeast quarter of section four, containing one hundred and sixty-one acres and twelve hundredths of an acre. Lots numbered one, two, three, four, five, six, and seven, south half of northeast quarter, southeast quarter of northwest quarter, and east half of southwest quarter of section six, containing four hundred and sixty-six acres and one hundredth of an acre. All of section ten, containing six hundred and forty acres. West half of section, and lots numbered seven and eight of section fourteen, containing three hundred and eighty-four acres and fifty-five hundredths of an acre. North half of section twenty-two, containing three hundred and twenty acres. Lots numbered five and six of section twenty-six, containing sixty-four acres and eighty-eight hundredths of an acre.

TOWNSHIP TWENTY-NINE, RANGE TWENTY-ONE.

Southwest quarter, and lots numbered nine and ten, of section two, containing three hundred and twenty-five acres and thirty-eight hundredths of an acre. Lots numbered one and two, south half of northeast quarter, and southeast quarter of section four, containing three hundred and twenty acres and thirty-three hundredths of an acre. North half of northeast quarter, northwest quarter, and south half of southeast quarter of section ten, containing three hundred and twenty acres.

43 Lots numbered five and six, south half of northwest quarter, and southwest quarter of section fourteen, containing three hundred and sixty acres and eight hundredths of an acre. Northwest quarter of section twenty-two, containing one hundred and sixty

acres. Lots numbered seven and eight of section twenty-six, containing sixty-six acres and sixty-nine hundredths of an acre. Lots numbered one and two and southeast quarter of southwest quarter of section thirty-two, containing sixty-three acres and sixty hundredths of an acre.

TOWNSHIP THIRTY, RANGE TWENTY-ONE.

Lots numbered five, nine, eight, and ten, of section two, containing one hundred and thirty-four acres and fifty-two hundredths of an acre. Northeast quarter of section ten, containing one hundred and sixty acres. Lots numbered five and (6) six of section fourteen, containing sixty-seven acres and forty-eight hundredths of an acre. Northeast quarter and east half of northwest quarter of section twenty-two, containing two hundred and forty acres. West half of southwest quarter of section twenty-six, containing eighty acres.

The said tracts as described in the foregoing pages from one to fourteen, inclusive, containing the aggregate area of (127,843.56) one hundred and twenty-seven thousand eight hundred and forty-three acres and fifty-six hundredths of an acre.

Now, know ye, that the United States of America, in consideration of the premises, and pursuant to the said act of Congress, have
44 given and granted, and by these presents do give and grant, unto the said Missouri, Kansas, and Texas Railway Company of Kansas, and its assigns, the tracts of land selected as aforesaid and described in the foregoing, yet *in*cluding "all mineral lands," should any such be found to exist, in the tracts described in the foregoing.

To have and to hold the said tracts, with the appurtenances thereof, unto the said Missouri, Kansas, and Texas Railway Company of Kansas and its assigns forever.

In testimony whereof, I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent, and the seal of the General Land-Office to be hereunto affixed.

Given under my hand at the city of Washington, this nineteenth day of February, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-sixth.

By the President,

U. S. GRANT,
By J. PARISH, *Secretary.*
[SEAL.] C. B. BOYNTON,
Recorder of the General Land-Office.

45 STATE OF KANSAS,
Neosho County, ss:

I, Robert F. Kenerly, register of deeds of Neosho County, State of Kansas, do hereby certify that the above and foregoing is a true and correct copy of the record of a patent filed in this office on the fifteenth day of March, A. D. 1872, as the same appears of record in my office.

In witness whereof I have hereunto set my hand and affixed my official seal, this 11' day of February, A. D. 1874.

[SEAL.] ROBT. F. KENNERLEY,
Register of Deeds of Neosho County, Kansas.

46 United States of America, to all to whom these presents shall come, greeting:

Whereas, by the act of Congress, approved July 26th, 1866, entitled An act granting lands to the State of Kansas, to aid in the construction

of a southern branch of the Union Pacific Railway and telegraph from Fort Riley, Kansas, to Fort Smith, Arkansas, authority is given to the Union Pacific Railway Company, South Branch, now known as the Missouri, Kansas, and Texas Railway Company, of Kansas, a corporation existing under the laws of said State, to construct a railroad and telegraph-line under certain conditions and stipulations, as expressed in said act, and provision is made for granting to the State of Kansas, for the use and benefit of said Railway Company, every alternate section of land, or parts thereof, designated by odd numbers, to the extent of five alternate sections per mile on each side of said road, and not exceeding in all ten sections per mile.

And whereas it is further enacted that, in case it shall appear that the United States have, when the line of said road is definitely located, sold any sections or any parts thereof, granted as aforesaid, or that the right of pre-emption or homestead settlements has attached to the same, then so much land is set apart to be selected for the purposes aforesaid, nearest to the sections above specified, provided that
47 said lands hereby granted as indemnity, shall not be selected beyond twenty miles from the line of said road.

And whereas it is further enacted by the 3rd section of the aforesaid act that when the governor of the State of Kansas shall certify that any section of ten consecutive miles of said road is completed in a good, substantial, and workmanlike manner, as a first-class railroad, patents shall issue to said company for the lands thereby granted;

And whereas it is indicated by letter of the Secretary of the Interior to the Commissioner of the General Land-Office, dated July 25th, 1870, and map therewith, duly certified by the governor of the State of Kansas, that the said Missouri, Kansas and Texas Railway Company has fully completed and equipped, as required by the act, the said railway from Junction City to the southern boundary of the State of Kansas;

And whereas certain tracts have been selected under the acts aforesaid by Isaac T. Goodnow, land-commissioner of the Missouri, Kansas and Texas Railway Company, as shown by the original list of selections dated June 29, 1871, certified under same date by the register and receiver at Humboldt, Kansas, the said tracts being described as follows, to wit:

South of base-line and east of sixth principal meridian, Kansas.

TOWNSHIP THIRTY, RANGE NINETEEN.

Lots numbered one, two, three, and four, northeast quarter,
48 east half of northwest quarter, east half of southwest quarter, and southeast quarter of section seven, containing six hundred and thirty-two acres and fifty-eight hundredths of an acre. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. All of section thirteen, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acres. Northeast quarter and west half of section seventeen, containing four hundred and eighty acres. All of section nineteen, containing six hundred and thirty-four acres and seventy-eight hundredths of an acre. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres. Northeast quarter and west half of section twenty-five, containing four hundred and eighty acres. All of section twenty-seven, containing six hundred and forty

acres. All of section twenty-nine, containing six hundred and forty acres. All of section thirty-one, containing six hundred and thirty-nine acres and twenty-six hundredths of an acre. All of section thirty-three, containing six hundred and forty acres. South half of section thirty-five, containing three hundred and twenty acres.

TOWNSHIP THIRTY-ONE, RANGE NINETEEN.

Lots numbered one, two, three, four, south half of northeast quarter, south half of northwest quarter, and southwest quarter of section
49 one, containing four hundred and eighty-two acres and twenty-two hundredths of an acre. All of section three, containing six hundred and forty-three acres and eighty-four hundredths of an acre. All of five, containing six hundred and forty-four acres and eighty hundredths of an acre. Northeast quarter, east half of northwest quarter, southeast quarter; lots numbered one and two, of section seven, containing four hundred and sixty acres and seventy-two hundredths of an acre. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. All of section thirteen, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acres. All of section seventeen, containing six hundred and forty acres. Lots numbered one, two, three, four, east half of northwest quarter, east half of southwest quarter, and southeast quarter of section nineteen, containing four hundred and sixty-one acres and thirty-four hundredths of an acre. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres. North half of section twenty-five, containing three hundred and twenty acres. All of section twenty-seven, containing six hundred and forty acres. All of section twenty-nine, containing six hundred and forty acres. Lots
50 numbered one, two, three, four, east half of northwest quarter, east half of southwest quarter, and east half of section thirty-one, containing six hundred and twenty-four acres and thirty-eight hundredths of an acre. Northwest quarter and east half of section thirty-three, containing four hundred and eighty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY-TWO, RANGE NINETEEN.

All of section one, containing six hundred and forty acres and twenty-four hundredths of an acre. All of section three, containing six hundred and forty-two acres and thirty hundredths of an acre. All of section five, containing six hundred and forty-one acres and twenty-four hundredths of an acre. East half of section, lots numbered one, two, three, four, east half of northwest quarter and east half of southwest quarter of section seven, containing six hundred and twenty-five acres and thirty-two hundredths of an acre. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. All of section thirteen, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acres. All of section seventeen, containing six hundred and forty acres. Lots numbered one, two, three, four, east half of section; east half of northwest quarter and east half of southwest quarter of section nineteen, containing six
51 hundred and twenty-five acres and eighteen hundredths of an acre. All of section twenty-one, containing six hundred and forty acres. All of section three, containing six hundred and forty

acres. All of section twenty-five, containing six hundred and forty acres. All of section twenty-seven, containing six hundred and forty acres. All of section twenty-nine, containing six hundred and forty acres. Lots numbered one, two, three, four, east half of northwest quarter, east half of southwest quarter, and east half of section thirty-one, containing six hundred and thirty acres and ninety-six hundredths of an acre. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY-THREE, RANGE NINETEEN.

Lots numbered one, two, three, four, south half of northeast quarter, south half of northwest quarter, and south half of section one, containing six hundred and thirty-nine acres and sixty-four hundredths of an acre. All of section three, containing six hundred and thirty-nine acres and sixty-two hundredths of an acre. All of section five, containing six hundred and thirty-nine acres and eight hundredths of an acre. Lots numbered one, two, three, four, east half of northwest quarter, east half of southwest quarter, and east half of section seven, containing six hundred and thirty-three acres and fifty-eight hundredths of an acre.
52 All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. All of section thirteen, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acres. All of section seventeen, containing six hundred and forty acres. All of section nineteen, containing six hundred and thirty-five acres and forty-four hundredths of an acre. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres. All of section twenty-five, containing six hundred and forty acres. All of section twenty-seven, containing six hundred and forty acres. All of section twenty-nine, containing six hundred and forty acres. All of section thirty-one, containing six hundred and thirty-seven acres and thirty-eight hundredths of an acre. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY-FOUR, RANGE NINETEEN.

Lots numbered one, two, three, four, south half of northeast quarter, south half of northwest quarter, and south half of section one, containing six hundred and thirty-eight acres and ninety-eight hundredths of an acre. All of section three, containing six hundred and thirty-eight acres and eighty-four hundredths of an acre. All of section five, containing six hundred and forty acres and ninety-four hundredths
53 of an acre. Lots numbered one, two, three, four, east half of northwest quarter, east half of southwest quarter, and east half of section seven, containing six hundred and thirty-six acres and sixty-four hundredths of an acre. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. All of section thirteen, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acres. All of section seventeen, containing six hundred and forty acres. All of section nineteen, containing six hundred and thirty-nine acres and eight hundredths of an acre. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hun-

dred and forty acres. All of section twenty-five, containing six hundred and forty acres. All of section twenty-seven, containing six hundred and forty acres. All of section twenty-nine, containing six hundred and forty acres. All of section thirty-one, containing six hundred and forty acres and eighty-two hundredths of an acre. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY-FIVE, RANGE NINETEEN.

Lots numbered one, two, three, four, of section one, containing one hundred and nine acres and twenty-six hundredths of an acre. Lots numbered one, two, three, four, of section three, containing one
54 hundred and fifty acres, and twenty-eight hundredths of an acre, in lots one, two, three, and four, of section five, containing one hundred and twenty-one acres and twenty-six hundredths of an acre.

TOWNSHIP TWENTY-EIGHT, RANGE TWENTY.

Southeast quarter of southwest quarter and southwest quarter of southeast quarter of section nineteen, containing eighty acres. Lots number one, two, and north half of southeast quarter of section thirty-one, containing one hundred and fifty-six acres, and twenty-nine hundredths of an acre.

TOWNSHIP TWENTY-NINE, RANGE TWENTY.

Southeast quarter of northwest quarter and southwest quarter of southwest quarter of section seven, containing seventy-eight acres and fifty-three hundredths of an acre. Lot number seven, and southwest quarter of southeast quarter of section nine, containing seventy-four acres, and thirty hundredths of an acre. East half of the northeast quarter and south half of the southwest quarter of section seventeen, containing one hundred and sixty acres. Southwest quarter of northwest quarter and northwest quarter of southwest quarter of section twenty-one, containing eighty acres. Northeast quarter and west half of section twenty-nine, containing four hundred and eighty acres. East half of section twenty-one, containing three hundred and twenty acres.

TOWNSHIP THIRTY, RANGE TWENTY.

Lots numbered three and four, south half of northwest quarter
55 and southwest quarter of section five, containing three hundred and nineteen acres and twenty-four hundredths of an acre. All of section seven, containing six hundred and thirty-nine acres. South half of northwest quarter and southwest quarter of section nine, containing two hundred and forty acres. Northwest quarter and east half of section seventeen, containing four hundred and eighty acres. All of section nineteen, containing six hundred and forty acres and forty-eight hundredths of an acre. West half of section twenty-one, containing three hundred and twenty acres. All of section twenty-nine, containing six hundred and forty acres. All of section thirty-one, containing six hundred and forty acres, and thirty-four hundredths of an acre.

TOWNSHIP THIRTY-ONE, RANGE TWENTY.

Lots numbered two, three, four, southwest quarter of northeast quarter and north half of southeast quarter of section five, containing two hundred and forty-one acres and two hundredths of an acre. Northeast quarter, lots numbered one and two, and east half of northwest quarter of section seven, containing three hundred and eleven acres and nine hundredths of an acre. West half of northeast quarter and west half of southeast quarter of section seventeen, containing one hundred and sixty acres. Lot number three, northeast quarter of southwest quarter and southeast quarter of section nineteen, containing two hundred and thirty-five acres and ninety-three hundredths of an acre.
56 North half of northeast quarter and northwest quarter of section twenty-nine, containing two hundred and forty acres.

TOWNSHIP THIRTY-TWO, RANGE TWENTY.

Lots numbered one and four, southeast quarter of northeast quarter, southwest quarter of northwest quarter, and southwest quarter of section five, containing three hundred and twenty-one acres and forty-eight hundredths of an acre. Lots numbered one, two, three, four, east half of northwest quarter, east half of southwest quarter, and southeast quarter of section seven, containing three hundred and forty-six acres and two hundredths of an acre. Northwest quarter and east half of section seventeen, containing four hundred and eighty acres. Lots numbered one, two, three, four, east half of northwest quarter, east half of southwest quarter, and southeast quarter of section nineteen, containing four hundred and sixty-nine acres and eighty-two hundredths of an acre. All of section twenty-nine, containing six hundred and forty acres. Lots numbered one, two, three, four, east half of southwest quarter and east half of section thirty-one, containing six hundred and thirty acres and sixty-six hundredths of an acre.

TOWNSHIP THIRTY-THREE, RANGE TWENTY.

All of section five, containing six hundred and thirty-eight acres and seventy hundredths of an acre. All of section seven, containing six hundred and thirty-three acres and forty-six hundredths of an acre.
57 West half of northwest quarter and west half of southwest quarter of section nine, containing one hundred and sixty acres. All of section seventeen, containing six hundred and forty acres. All of section nineteen, containing six hundred and thirty-four acres and thirty-two hundredths of an acre. West half of northwest quarter and west half of southwest quarter of section twenty-one, containing one hundred and sixty acres. West half of northeast quarter, west half of southeast quarter, and west half of section twenty-nine, containing four hundred and eighty acres. All of section thirty-one, containing six hundred and thirty-seven acres and sixty-two hundredths of an acre.

TOWNSHIP THIRTY-FOUR, RANGE TWENTY.

Lots two, three, four, southwest quarter of northeast quarter, south half of northwest quarter, southwest quarter, west half of southeast quarter of section five, containing four hundred and eighty acres and sixty hundredths of an acre. All of section seven, containing six hundred and thirty-seven acres and forty-four hundredths of an acre. West half

of northwest quarter and west half of southwest quarter of section seventeen, containing one hundred and sixty acres. All of section nineteen, containing six hundred thirty-six acres and thirty-four hundredths of an acre. Northwest quarter of northwest quarter of section twenty-nine, containing forty acres. Lots numbered one, two, three, and four, west half of northeast quarter, east half of northwest quarter, east half of southwest quarter, and west half of southeast quarter of
58 section thirty-one, containing four hundred and seventy-eight acres and seventy-eight hundredths of an acre.

TOWNSHIP TWENTY-NINE, RANGE NINETEEN.

South half of section twenty-one, containing three hundred and twenty acres. North half of northwest quarter and southeast quarter of southwest quarter of section twenty-three, containing one hundred and twenty acres. Northeast quarter and west half of section twenty-five, containing four hundred and eighty acres. Northwest quarter of northeast quarter. South half of southeast quarter and west half of section twenty-seven, containing four hundred and forty acres. All of section twenty-nine, containing six hundred and forty acres. Lots numbered one, two, three, and four, east half of northwest quarter, east half of southwest quarter, and east half of section thirty-one, containing six hundred and thirty acres and thirty-two hundredths of an acre. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY, RANGE NINETEEN.

All of section one, containing six hundred and thirty-nine acres and ten hundredths of an acre. Lots numbered one, two, three, and four, south half of northeast quarter, south half of northwest quarter, and southwest quarter of section three, containing four hundred and
59 seventy-seven acres and seventy-six hundredths of an acre. Lots numbered one, two, three, and four, south half of northeast quarter, south half of northwest quarter, and southeast quarter of section five, containing four hundred and seventy-seven acres and fifty-six hundredths oanacre.

TOWNSHIP TWENTY-SEVEN, RANGE EIGHTEEN.

Southeast quarter of section twenty-one, containing one hundred and sixty acres.

TOWNSHIP TWENTY-SEVEN, RANGE NINETEEN.

Lots numbered three and four, south half of northwest quarter, and south half of section three, containing four hundred and eighty-three acres and eighty-six hundredths of an acre.

TOWNSHIP THIRTY, RANGE SEVENTEEN.

Lot number one, southeast quarter of northeast quarter, and southeast quarter of section one, containing two hundred and forty acres and four hundredths of an acre.

TOWNSHIP TWENTY-EIGHT, RANGE EIGHTEEN.

South half of northeast quarter, northwest quarter of northwest quarter, southeast quarter of southwest quarter, and southeast quarter of section nine, containing three hundred and twenty acres. All of section fifteen, containing six hundred and forty acres.

Indemnity limits.

TOWNSHIP TWENTY-SIX, RANGE TWENTY.

Lots numbered three, four, five, and six, and south half of section twenty-five, containing five hundred and fifty-eight acres and eighty-six hundredths of an acre. Lots numbered three, four, five, six, and
60 south half of section twenty-seven, containing five hundred and forty-nine acres and twelve hundredths of an acre. Lots numbered three, four, five, east half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of section twenty-nine, containing four hundred and forty-nine acres and eighty-three hundredths of an acre. Northeast quarter of section thirty-one, containing one hundred and sixty acres. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP TWENTY-SEVEN, RANGE TWENTY.

All of section one, containing six hundred and forty acres and forty-eight hundredths of an acre. All of section three, containing six hundred and forty-four acres and eighty-two hundredths of an acre. All of section five containing six hundred and forty-six acres and forty-four hundredths of an acre. North half of northeast quarter of section seven, containing eight acres. East half of section eleven, containing three hundred and twenty acres. North half of section, northwest quarter of southwest quarter, east half of southeast quarter, and northwest quarter of southeast quarter of section thirteen, containing four hundred and eighty acres. West half of northeast quarter, west half of southeast quarter, and west half of section fifteen, containing four hundred and eighty acres. West half of northwest quarter and west half of southwest quarter of section seventeen, containing one
61 hundred and sixty acres.

TOWNSHIP TWENTY-SIX, RANGE TWENTY-ONE.

Lots numbered three, four, five, and six, and south half of section twenty-nine, containing five hundred and sixty-nine acres and seventy-eight hundredths of an acre. Lots numbered one, two, three, and four, east half of northwest quarter, east half of southwest quarter, and east half of section thirty-one, containing six hundred and twenty-one acres and seventy-six hundredths of an acre. West half of northeast quarter, west half of southeast quarter, and west half of section thirty-three, containing four hundred and eighty acres.

TOWNSHIP TWENTY-SEVEN, RANGE TWENTY-ONE.

South half of northeast quarter, south half of northwest quarter, and south half of section three, containing four hundred and eighty acres.

Lots numbered one, two, three, and four, south half of northwest quarter, south half of northeast quarter, and south half of section five, containing six hundred and forty-two acres and ten hundredths of an acre. Lots numbered one, two, three, and four, east half of northwest quarter, east half of southwest quarter, and east half of section seven, containing six hundred and twenty-one acres and sixty hundredths of an acre. All of section nine, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acres. All of section seventeen, containing six hundred and forty acres.

62 TOWNSHIP TWENTY-SEVEN, RANGE TWENTY.

Northeast quarter and west half of section twenty-one, containing four hundred and eighty acres. Northwest quarter of northeast quarter, east half of southeast quarter, and southwest quarter of southeast quarter of section twenty-three, containing one hundred and sixty acres. All of section twenty-five, containing six hundred and forty acres. West half of northeast quarter and northwest quarter of section twenty-seven, containing two hundred and forty acres. West half of northeast quarter, northeast quarter of northeast quarter, and southeast quarter of section twenty-nine, containing two hundred and eighty acres. Southwest quarter, west half of southeast quarter, and southeast quarter of southeast quarter of section thirty-three, containing two hundred and eighty acres. Northeast quarter and west half of section thirty-five, containing four hundred and eighty acres. Southeast quarter of section twenty-seven, containing one hundred and sixty acres.

TOWNSHIP TWENTY-EIGHT, RANGE TWENTY.

Lots numbered one, two, three, and four, south half of northeast quarter, south half of northwest quarter of section three, containing three hundred and twenty acres and seventy hundredths of an acre. Northeast quarter of southwest quarter of section nine, containing forty acres.

TOWNSHIP TWENTY-SEVEN, RANGE TWENTY-ONE.

63 Lots numbered one, two, three, and four, east half of northwest quarter, east half of southwest quarter, and east half of section nineteen, containing six hundred and twenty-three acres and seventy-six hundredths of an acre. Northeast quarter and west half of section twenty-one, containing four hundred and eighty acres. Northwest quarter, east half of southwest quarter, and east half of section twenty-seven, containing five hundred and sixty acres. All of section twenty-nine, containing six hundred and forty acres. Lots numbered one, two, three, and four, east half of northwest quarter, east half of southwest quarter, and east half of section thirty-one, containing six hundred and twenty-five acres and eighty-two hundredths of an acre. Southeast quarter of northeast quarter of section thirty-three, containing forty acres. Lots numbered one, two, three, four, and west half of section thirty five, containing four hundred and forty-six acres and ninety-six hundredths of an acre.

TOWNSHIP TWENTY-EIGHT, RANGE TWENTY-ONE.

Lots numbered one, two, three, and four, south half of northeast quarter, south half of northwest quarter, and southeast quarter of sec-

tion three, containing four hundred and eighty-two acres, and forty-eight hundredths of an acre. Lots numbered one, two, three, and four, south half of northeast quarter, south half of northwest quarter, and southwest quarter of section five, containing four hundred and seventy-
64 nine acres and forty-two hundredths of an acre. Lots numbered one, two, three, and four, east half of northwest quarter, east half of southwest quarter, and east half of section seven, containing six hundred and twenty-eight acres and forty-eight hundredths of an acre. Southeast quarter of section nine, containing one hundred and sixty acres. Lots numbered five, six, seven, and eight, and northwest quarter of section eleven, containing two hundred and eighty-eight acres and thirty-eight hundredths of an acre. Northwest quarter and east half of section fifteen, containing four hundred and eighty acres. South half of northeast quarter, east half of northwest quarter, and lots numbered one and two of section nineteen, containing two hundred and thirty-five acres and seventeen hundredths of an acre. Northwest quarter and east half of section twenty-one, containing four hundred and eighty acres. Lots numbered five and six, and west half of section twenty-three, containing three hundred and eighty-four acres and fifty-six hundredths of an acre. North half of section, north half of southwest quarter and west half of southeast quarter of section twenty-seven, containing four hundred and eighty acres. Lots numbered one, two, three, and four, east half of northwest quarter, east half of southwest quarter, and southeast quarter of section thirty-one, containing four hundred and seventy-one acres and thirty hundredths of an acre. Northwest quarter of section thirty-three, containing one
65 hundred and sixty acres. Southwest quarter, lots numbered seven and eight of section thirty-five, containing two hundred and thirty-four acres and eighty-eight hundredths of an acre.

TOWNSHIP TWENTY-NINE, RANGE TWENTY-ONE.

Lots numbered three and four, south half of northwest quarter and south half of section three, containing four hundred and eighty acres and twenty-three hundredths of an acre. Northwest quarter of section nine, containing one hundred and sixty acres. Lots numbered five and six, and northwest quarter of section eleven, containing two hundred and twenty-five acres and fifty-seven hundredths of an acre. East half of section fifteen, containing three hundred and twenty acres. East half of southeast of quarter of section nineteen, containing eighty acres. North half of section twenty-one, containing three hundred and twenty acres. West half of section twenty-three, containing three hundred and twenty acres. North half of northwest quarter and south half of southeast quarter of section twenty-nine, containing one hundred and sixty acres. North half of section thirty-three, containing three hundred and twenty acres. Lots numbered five, six, seven, and eight, and west half of section thirty-five, containing four hundred and fifty-three acres and ninety-eight hundredths of an acre.

TOWNSHIP THIRTY, RANGE TWENTY-ONE.

66 Lots numbered one, two, and three, south half of northeast quarter, southeast quarter of northwest quarter, and south half of section three, containing five hundred and fifty-nine acres and fifty-three hundredths of an acre. Lots numbered one, two, three, and four, south half of northeast quarter and south half of northwest quarter of

section five, containing three hundred and eighteen acres and sixteen hundredths of an acre. Northwest quarter and east half of section nine, containing four hundred and eighty acres. Lots numbered five, six, seven, and eight, and west half of section eleven, containing four hundred and fifty-four acres and seventy-six hundredths of an acre. Northeast quarter of section fifteen, containing one hundred and sixty acres. Lots numbered seven and eight, of section twenty-three, containing sixty-seven acres and sixty-five hundredths of an acre. East half of southeast quarter of section twenty-seven, containing eighty acres.

The said tracts as described in the foregoing pages, from one to ten, inclusive, containing the aggregate area of (105,791.70) one hundred and five thousand seven hundred and ninety-one acres and seventy hundredths of an acre.

Now know ye that the United States of America, in consideration of the promises, and pursuant to the said act of Congress, have given and granted, and by these presents do give and grant, unto the said Missouri,
Kansas and Texas Railway Company, of Kansas, and its assigns,
67 the tracts of land situated as aforesaid described in the foregoing,
yet excluding all mineral lands, should any such be found to exist in the tracts described in the foregoing; to have and to hold the said tracts, with the appurtenances thereof, unto the said Missouri, Kansas and Texas Railway Company, of Kansas, and its assigns forever.

In testimony whereof I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent, and the seal of the General Land-Office to be hereunto affixed.

Given under my hand, at the city of Washington, this twenty-sixth day of February, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-sixth.

By the President:

U. S. GRANT,
By J. PARISH, *Sec'y.*

[SEAL.] C. B. BOYNTON,
Recorder of the General Land-Office.

STATE OF KANSAS,
Neosho County, ss:

I, Robert F. Kenerly, register of deeds of Neosho County, Kansas, do hereby certify that the above and foregoing is a true and cor-
68 rect copy of the record of a patent filed in my office on the 12th day of September, A. D. 1872, as the same appears of record in this office.

Witness my hand and official seal this 10 day of February, A. D. 1874.

[SEAL.] R. F. KENNERLY,
Register of Deeds.

EXHIBIT B.

Copy of patent from the United States to Missouri, Kansas & Texas Railroad Co.

69 To all to whom these presents shall come, greeting:

Whereas, by the act of Congress, approved July 26th, 1866, entitled "An act granting lands to the State of Kansas to aid in the con.

struction of a southern branch of the Union Pacific Railway and Telegraph, from Fort Riley, Kansas, to Fort Smith, Arkansas, authority is given to the Union Pacific Railway Company, south branch, now known as the Missouri, Kansas and Texas Railway Company, of Kansas, a corporation existing under the laws of said State, to construct a railroad and telegraph line, under certain conditions and stipulations, as expressed in said acts, and provision is made for granting to the State of Kansas, for the use and benefit of said railroad company, every alternate section of land, or parts thereof, designated by odd numbers, to the extent of five alternate sections per mile, on each side of said road, and not exceeding in all ten sections per mile;

And whereas it is further enacted that in case it shall appear that the United States have, when the line of said road is definitely located, sold any sections, or parts thereof, granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, then so much land is set apart to be selected for the purposes aforesaid, nearest to the sections above specified, provided that said lands hereby granted as indemnity shall not be selected beyond twenty miles from the line of said road;

70 And whereas it is further enacted by the 3rd section of the aforesaid acts that when the governor of the State of Kansas shall certify that any section of ten consecutive miles of said road is completed, in a good, substantial, and workmanlike manner, as a first-class railroad, patents shall be issued to said company for the lands thereby granted;

And whereas it is indicated by letter of the Secretary of the Interior to the Commissioner of the General Land-Office dated July 25, 1870, and map therewith, duly certified by the governor of the State of Kansas, that the said Missouri, Kansas and Texas Railway Company has fully completed and equipped, as required by the act, the said railroad from Junction City to the southern boundary of the State of Kansas;

And whereas certain tracts have been selected under the act aforesaid, by Isaac T. Goodnow, land commissioner of the Missouri, Kansas and Texas Railway Company, as shown by the original list of selections dated June 29th, 1871, certified under same date by the register and receiver at Humboldt, Kansas, the said tracts being described as follows, to wit:

South of base-line and east of the sixth principal meridian, Kansas.

TOWNSHIP TWENTY-NINE, RANGE TWENTY.

South half of southwest quarter of section three, containing eighty acres. Lot number five of section fifteen, containing thirty-nine acres and eighty hundredths of an acre. Southeast quarter of southwest quarter of section fifteen, containing forty acres. North half of

71 southwest quarter, and lots numbered three, four, and five of section twenty-three, containing one hundred and fifty-one acres and thirty hundredths of an acre. South half of northeast quarter, south half of southwest quarter, and southeast quarter of section twenty-seven, containing three hundred and twenty acres.

TOWNSHIP THIRTY, RANGE TWENTY.

West half of southwest quarter, and lots numbered eight, ten, and eleven of section one, containing one hundred and seventy-five acres

and eighty hundredths of an acre. Lots numbered one, two, three, four, south half of northeast quarter, south half of northwest quarter, and southeast quarter of section three, containing four hundred and seventy-eight acres and fifty-six hundredths of an acre. Southwest quarter of northeast quarter, west half of southeast quarter, and southeast quarter of southeast quarter of section nine, containing one hundred and sixty acres. Northwest quarter and southeast quarter of section eleven, containing three hundred and twenty acres. Lots numbered one, two, three, and five, southwest quarter of northeast quarter, and southwest quarter of section thirteen, containing three hundred and twenty-five acres and ninety hundredths of an acre. West half of section, and southeast quarter of section fifteen, containing four hundred and eighty acres. Southeast quarter of section twenty-one, containing one hundred and sixty acres. Southwest quarter, and east half of section
72 twenty-three, containing four hundred and eighty acres. South half of northwest quarter and south half of section twenty-five, containing four hundred acres. All of section twenty seven, containing six hundred and forty acres. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY-ONE, RANGE TWENTY.

Lots numbered one and four, southeast quarter of northeast quarter, southwest quarter of northwest quarter, and southwest quarter of section one, containing three hundred and twenty-one acres and four hundredths of an acre. All of section three, containing six hundred and forty-two acres and fifty-six hundredths of an acre. Lot number one, and southeast quarter of northeast quarter of section five, containing eighty acres and sixteen hundredths of an acre. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. Northeast quarter and southwest quarter of section thirteen, containing three hundred and twenty acres. All of section fifteen, containing six hundred and forty acres. East half of northeast quarter, and east half of southeast quarter of section seventeen, containing one hundred and sixty acres. All of section twenty-one, containing six hundred and forty acres. Southwest quarter and north half of section twenty-three, containing four hundred and eighty acres. Northeast quarter and south half of section twen-
73 ty-five, containing four hundred and eighty acres. South half of section twenty-seven, containing three hundred and twenty acres. Northeast quarter and southwest quarter of section thirty three, containing three hundred and twenty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY-TWO, RANGE TWENTY.

Lots numbered one, two, three, and four, south half of northeast quarter, south half of northwest quarter, and southwest quarter of section one, containing four hundred and eighty-one acres and six hundredths of an acre. All of section three, containing six hundred and forty-one acres and forty-four hundredths of an acre.

Northeast quarter of section nine, containing one hundred and sixty acres. Southeast quarter and north half of section eleven, containing four hundred and eighty acres. All of section thirteen, containing six hundred and forty acres. Northeast quarter and north half of

southeast quarter of section fifteen, containing two hundred and forty acres. Southeast quarter and west half of section twenty-one, containing four hundred and eighty acres. Southwest quarter and north half of section twenty-three, containing four hundred and eighty acres. All of section twenty-five, containing six hundred and forty acres. South-half of northeast quarter and northwest quarter of section twenty-seven, containing two hundred and forty acres. Northeast quarter of section thirty-five, containing one hundred and sixty acres.

TOWNSHIP THIRTY-THREE, RANGE TWENTY.

74 Lots numbered three and four, south half of northwest quarter, and south half of section one, containing four hundred and seventy-eight acres and ninety-seven hundredths of an acre. Southwest quarter and southwest quarter of northeast quarter of section three containing two hundred acres. East half of northwest quarter, east half of southwest quarter, and east half of section nine, containing four hundred and eighty acres. North half of northeast quarter, southwest quarter, and south half of southeast quarter of section eleven, containing three hundred and twenty acres. Southwest quarter and north half of section thirteen, containing four hundred and eighty acres. North half of section, southwest quarter, east half of southeast quarter, and southwest quarter of southeast quarter of section fifteen, containing six hundred acres. East half of northwest quarter, east half of southwest quarter, and east half of section twenty-one, containing four hundred and eighty acres. Southeast quarter, and west half of section twenty-three, containing four hundred and eighty acres. Southeast quarter, and north half of section twenty-five, containing four hundred and eighty acres. All of section twenty-seven, containing six hundred and forty acres. East half of northeast quarter, and east half of southeast quarter of section twenty-nine, containing one hundred and sixty acres. Southwest quarter, and north half of section thirty-three, containing four hundred and eighty acres. Southwest quarter of section thirty-five, containing one hundred sixty acres.

75 TOWNSHIP THIRTY-FOUR, RANGE TWENTY.

Lot number four of section one, containing forty acres and twenty-one hundredths of an acre. Lots numbers one and two, and south half of northeast quarter of section three, containing *containing* one hundred and fifty-nine acres and eighty-eight hundredths of an acre. Lot number one, and southeast quarter of northeast quarter, and east half of southeast quarter of section five, containing one hundred and sixty acres and forty-six hundredths of an acre. West half of northwest quarter, southwest quarter, west half of southeast quarter, and southeast quarter of southeast quarter of section nine, containing three hundred and sixty acres. East half of northeast quarter, northwest quarter of northeast quarter, south half of southwest quarter, and southeast quarter of section eleven, containing three hundred and sixty acres. Southwest quarter of section thirteen, containing one hundred and sixty acres. North half of northwest quarter, southwest quarter of northeast quarter, south half of southwest quarter, and southeast quarter of section fifteen, containing three hundred and sixty acres. East half of northwest quarter, east half of southwest quarter, and east half of section seventeen, containing four hundred and eighty acres. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres. Northeast

76 quarter of section twenty-five, containing one hundred and sixty acres. All of section twenty-seven, containing six hundred and forty acres. Northeast quarter east half of northwest quarter, southwest quarter of northwest quarter, and south half of section twenty-nine, containing six hundred acres. East half of northeast quarter, and east half of southeast quarter of section thirty-one, containing one hundred and sixty acres. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY-FIVE, RANGE TWENTY.

Lots numbered one and two of section one, containing eighty-one acres and twelve hundredths of an acre. Lots numbered one and two of section three, containing ninety acres and eighty hundredths of an acre. Lots numbered one and two of section five, containing one hundred acres and forty-eight hundredths of an acre.

TOWNSHIP THIRTY, RANGE TWENTY-ONE.

Southwest quarter section five, containing one hundred and sixty acres. Northeast quarter and southeast quarter of section seven, containing three hundred and eighteen acres. Northwest quarter of section seventeen, containing one hundred and sixty acres. Lots numbered four and five of section nineteen, containing one hundred and four acres and sixty hundredths of an acre. West half of southwest quarter and east half of southeast quarter of section twenty-one, containing
77 one hundred and sixty acres. Lots numbered seven and eight of section twenty-nine, containing seventy-eight acres. All of section thirty-one, containing six hundred and forty acres. North half of northeast quarter, east half of northwest quarter, northwest quarter of northwest quarter, and lots numbered one, two, three, and four of section thirty-three, containing three hundred and eighty acres and forty hundredths of an acre. East half of northwest quarter and west half of southwest quarter of section thirty-five, containing one hundred and sixty acres.

TOWNSHIP THIRTY-ONE, RANGE TWENTY-ONE.

South half of southwest quarter of section three, containing eighty acres. East half of southwest quarter and southeast quarter of section five, containing two hundred and forty acres. West half of northeast quarter, east half of northwest quarter, east half of southwest quarter, southeast quarter, and lots numbered one, two, three, and four of section seven, containing five hundred and forty-one acres and thirty hundredths of an acre. Lots numbered two and three northeast quarter of southwest quarter, and east half of southeast quarter of section nine, containing two hundred and twenty-five acres and ten hundredths of an acre. Lot numbered one, and west half of southwest quarter of section eleven, containing one hundred and eleven acres and thirty hundredths of an acre. East half of southwest quarter and west half
78 of southeast quarter of section fifteen, containing one hundred and sixty acres. East half of southwest quarter and southeast quarter of section seventeen, containing two hundred forty acres. West half of northeast quarter of northwest quarter, southeast quarter of southwest quarter, and lots numbered one and four of section nineteen,

containing two hundred and thirty-one acres and sixty-two hundredths of an acre. Lot numbered two, east half of northwest quarter and southwest quarter of section twenty-one, containing two hundred and sixty-four acres and sixty-eight hundredths of an acre. Lot numbered one of section twenty-three, containing thirty-three acres and ninety-six hundredths of an acre. Northeast quarter of northeast quarter, southeast quarter of southwest quarter, and southwest quarter of southeast quarter of section twenty-seven, containing one hundred and twenty acres. Northwest quarter of section twenty-nine, containing one hundred and sixty acres. South half of northeast quarter and southeast quarter of section thirty-one, containing two hundred and forty acres. Lots numbered one, two, six, eight, nine, and ten northwest quarter west half of southwest quarter, and northeast quarter of southwest quarter of section thirty-three, containing four hundred and fifty-four acres, and nineteen hundredths of an acre. Southwest quarter, and lot numbered two of section thirty-five, containing one hundred and ninety-seven acres and forty-two hundredths of an acre.

79 TOWNSHIP THIRTY-TWO, RANGE TWENTY-ONE.

Lots numbered two, three, four, and five, and south half of northwest quarter of section three, containing two hundred and thirty-nine acres and seventy-two hundredths of an acre. Lots numbered one, two, three, and four, south half of northeast quarter, south half of northwest quarter, and southeast quarter of section five, containing four hundred and eighty acres and eighty-two hundredths of an acre. East half of northwest quarter, and lots numbered one and two of section seven, containing one hundred and fifty-two acres and sixty-nine hundredths of an acre. Southwest quarter, and lot number two of section eleven, containing two hundred acres and eleven hundredths of an acre. Northeast quarter of section fifteen, containing one hundred and sixty acres. Southwest quarter and south half of southeast quarter of section seventeen, containing two hundred and forty acres. Southeast quarter of southeast quarter of section nineteen, containing forty acres. Lots numbered one, four, and five, and northwest quarter of northeast quarter of section twenty-one, containing one hundred and thirty-one acres and thirty hundredths of an acre. Lot number one, and southwest quarter of section twenty-three, containing two hundred and two acres and eighteen hundredths of an acre. Lots numbered one and two, and southeast quarter of section twenty-seven, containing two hundred and thirty-five acres and ninety hundredths of an acre. Northeast
80 quarter east half of northwest quarter, southwest quarter, and north half of southeast quarter of section twenty-nine, containing four hundred and eighty acres. All of section thirty-one, containing six hundred and thirty-one acres and four hundredths of an acre. Lots numbered one, five, six, and eight, and north half of northwest quarter of section thirty-three, containing two hundred and twenty-four acres and ninety hundredths of an acre. Lots numbered one and two, and northwest quarter and southwest quarter of section thirty-five, containing four hundred and ten acres and forty-eight hundredths of an acre.

TOWNSHIP THIRTY-THREE, RANGE TWENTY-ONE.

Lots numbered one, two, three, four, five, and six, and south half of northeast quarter, southeast quarter of northwest quarter, east half of

southwest quarter, and southeast quarter of section three, containing five hundred and forty-six acres and sixty-three hundredths of an acre. Southeast quarter of section five, containing one hundred and sixty acres. Southeast quarter of section seven, containing one hundred and sixty acres. Lots numbered one, two, six, and seven, and southwest quarter of section nine, containing two hundred and ninety-six acres and forty hundredths of an acre. West half of northwest quarter, southwest quarter, and lots numbered two of section eleven, containing two hundred and eighty-eight acres and thirty hundredths of an acre. Lots numbered two, four, five, southwest quarter of northeast quarter of section fifteen, containing one hundred and fifty-seven acres
81 and forty hundredths of an acre. Northeast quarter east half of northwest quarter, and northeast quarter of southwest quarter, and north half of southeast , and lots numbered three and four, of section nineteen, containing four hundred and thirty-eight acres and twenty-three hundredths of an acre. Southwest quarter and east half of section twenty-seven, containing four hundred and eighty acres. East half of northwest quarter, southwest quarter of northwest quarter, east half of southwest quarter, and southeast quarter of section twenty-nine, containing three hundred and sixty acres. Southeast quarter of section thirty-one, containing one hundred and sixty acres. West half of southeast quarter of section thirty-three, containing eighty acres. Lot number eight of section thirty-five, containing forty-seven acres and thirty hundredths of an acre.

TOWNSHIP THIRTY-FOUR, RANGE TWENTY-ONE.

Southwest quarter of northwest quarter and northwest quarter of southwest quarter of section three, containing eighty acres. Southeast quarter of section five, containing one hundred and sixty acres. East half of section seven, containing three hundred and twenty acres. West half of northeast quarter, southeast quarter of northeast quarter, northwest quarter, north half of southwest quarter, and southeast quarter of section nine, containing five hundred and twenty acres. East half of northwest quarter, and northwest quarter of northwest quarter
82 of section eleven, containing one hundred and twenty acres. West half of northwest quarter, west half of southwest quarter, southeast quarter of southwest quarter, and southwest quarter of southeast quarter of section fifteen, containing two hundred and forty acres. Northeast quarter, and west half of southeast quarter of section seventeen, containing two hundred and forty acres. East half of section twenty-one, containing three hundred and twenty acres. Southwest quarter of northwest quarter, southwest quarter, and lot number six of section twenty-three, containing two hundred and fifty-nine acres and eighteen hundredths of an acre. West half of northwest quarter, northeast quarter of northwest quarter, and west half of southeast quarter of section twenty-seven, containing two hundred acres. South half of section twenty-nine, containing three hundred and twenty acres. All of section thirty-one, containing six hundred and forty acres and sixty-eighth hundredths of an acre. Northeast quarter, north half of northwest quarter, south half of southwest quarter of section thirty-three, containing three hundred and twenty acres. Lot number six of section thirty-five, containing thirty acres and fifty-two hundredths of an acre.

TOWNSHIP THIRTY-FIVE, RANGE TWENTY ONE.

Lots numbered one and two of section five, containing seventy acres.

South of base-line, and east of sixth principal meridian, Kansas, twenty-mile indemnity limits.

83 TOWNSHIP THIRTY-NINE, RANGE SEVENTEEN.

Lots numbered two, of section thirty-two, containing thirty-nine acres and eighty-seven hundredths of an acre.

TOWNSHIP THIRTY, RANGE SEVENTEEN.

Lots numbered one and two, and east half of section eight, containing three hundred and ninety-six acres and four hundredths of an acre. Lots numbered one and two, and southeast quarter of section twenty, containing two hundred and thirty-one acres and forty-eight hundredths of an acre. All of section twenty-two, containing six hundred and forty acres. All of section twenty-eight, containing six hundred and forty acres. Lots numbered one and two, and east half of section thirty-two, containing three hundred and eighty-seven acres and sixteen hundredths of an acre. All of section thirty-four, containing six hundred and forty acres.

TOWNSHIP THIRTY-ONE, RANGE SEVENTEEN.

Lot numbered two, three, four, south half of northeast quarter, south half of northwest quarter, and south half of section two, containing six hundred and four acres and seventy-seven hundredths of an acre. All of section four, containing six hundred and forty-four acres and forty-two hundredths of an acre. Lots numbered one, two, three, four, and east half of section eight, containing five hundred and forty-two acres and ninety-four hundredths of an acre. All of section ten, containing six hundred and forty acres. West half of northeast quarter, west half of southeast quarter, and west half of section twelve, containing
84 four hundred and eighty acres. All of section fourteen, containing six hundred and forty acres. Lots numbered one, two, three, four, and southeast quarter of section twenty, containing three hundred and seventy-nine acres and twenty hundredths of an acre. All of section twenty-two, containing six hundred and forty acres. All of section twenty-four, containing six hundred and forty acres. All of section twenty-six, containing six hundred and forty acres. All of section twenty-eight, containing six hundred and forty acres. Lots numbered one, two, three, four, and east half of section thirty-two, containing five hundred and thirty-one acres and thirty-six hundredths of an acre. All of section thirty-four, containing six hundred and forty acres.

TOWNSHIP THIRTY-TWO, RANGE SEVENTEEN.

All of section two, containing six hundred and forty-one acres and four hundreths of an acre. All of section four, containing six hundred and forty-one acres and fifty-eight hundredths of an acre. Lots numbered one, two, three, four, and east half of section eight, containing five hundred and twenty-two acres and seventy-eight hundredths of an acre. All of section ten, containing six hundred and forty acres. All of section twelve, containing six hundred and forty acres. All of section fourteen, containing six hundred and forty acres. Lots numbered one, two, three, four, and east half of section twenty, containing five hundred and twelve acres and thirty-eight hundredths of an acre. All of section twenty-two, containing six hundred and forty acres.

85 North half of section , east half of southwest quarter, and southeast quarter of section twenty-four, containing five hundred and sixty acres. North half of northwest quarter, south half of southeast quarter of section twenty-six, containing one hundred and sixty acres. All of section twenty-eight, containing six hundred and forty acres. Lots numbered one, two, three, four, and east half of section thirty-two, containing five hundred and three acres and four hundredths of an acre. East half of section , northwest quarter of northwest quarter, and southwest quarter of section thirty-four, containing five hundred and twenty acres.

TOWNSHIP THIRTY-THREE, RANGE SEVENTEEN.

All of section two, containing six hundred and thirty-nine acres and sixty-two hundredths of an acre. Lots numbered three and four, and south half of northwest quarter, and south half of section four, containing four hundred and seventy-nine acres and eleven hundredths of an acre. East half of northeast quarter, and southeast quarter of section eight, containing two hundred and forty acres. All of section ten, containing six hundred and forty acres. All of section twelve, containing six hundred and forty acres. All of section fourteen, containing six hundred and forty acres. All of section twenty-two, containing six hundred and forty acres. East half of northeast quarter, west half of northwest quarter, and south half of section twenty-four, contain-
86 ing four hundred and eighty acres. All of section twenty-six, containing six hundred and forty acres.

TOWNSHIP THIRTY-FOUR, RANGE SEVENTEEN.

All of section two, containing six hundred and forty acres and sixty, four hundredths of an acre. Northwest quarter of northeast quarter northwest quarter, and south half of section twelve, containing five hundred and twenty acres. Northeast quarter, east half of northwest quarter, southwest quarter of northwest quarter, north half of southwest quarter, and north half of southeast quarter of section twenty-four, containing four hundred and forty acres.

TOWNSHIP THIRTY-ONE, RANGE EIGHTEEN.

All of section eighteen, containing six hundred and twenty-one acres and eighteen hundredths of an acre. Northeast quarter of northwest quarter, and lot number one, of section thirty, containing seventy-five acres and forty-four hundredths of an acre. Northeast quarter, and southwest quarter of section thrity-two, containing three hundred and twenty acres.

TOWNSHIP THIRTY-TWO, RANGE EIGHTEEN.

Lots numbered one, two, three, four, and five, south half of northeast quarter, and southeast quarter of northwest quarter, of section six, containing three hundred and twelve acres and twenty-seven hundredths of an acre. East half of section eight, containing three hundred and twenty acres. South half of section ten, containing three hundred
87 and twenty acres. Southeast quarter of northeast quarter, lots numbered one and two, and southeast quarter of northwest quarter of section eighteen, containing one hundred and fifty-three acres and

seventy-eight hundredths of an acre. All of section twenty, containing six hundred and forty acres. Northeast quarter and west half of section twenty-two, containing four hundred and eighty acres. North half of section twenty-six, containing three hundred and twenty acres. Northeast quarter, and south half of section twenty-eight, containing four hundred and eighty acres. All of section thirty, containing six hundred and twenty-eight acres and ninety-eight hundredths of an acre. All of section thirty-two, containing six hundred and forty acres. Northwest quarter, and south half of section thirty-four, containing four hundred and eighty acres.

TOWNSHIP THIRTY-THREE, RANGE EIGHTEEN.

All of section two, containing six hundred and forty-one acres and sixty-three hundredths of an acre. All of section four, containing six hundred and forty acres and eighty-eight hundredths of an acre. All of section six, containing six hundred and twenty-eight acres and twenty-four hundredths of an acre. All of section eight, containing six hundred and forty acres. Northwest quarter and south half of section ten, containing four hundred and eighty acres. All of section twelve, containing six hundred and forty acres. All of section fourteen,
88 containing six hundred and forty acres. All of section eighteen, containing six hundred and thirty-two acres and ninety-six hundredths of an acre. North half of section and southeast quarter of section twenty containing four hundred and eighty acres. All of section twenty-two, containing six hundred and forty acres. All of section twenty-four, containing six hundred and forty acres. All of section twenty-six, containing six hundred and forty acres. Northwest quarter of northeast quarter, and west half of section, west half of southeast quarter, and southeast quarter of southeast quarter of section twenty-eight, containing four hundred and eighty acres. All of section thirty, containing six hundred and thirty-five acres and seventy-eight hundredths of an acre. All of section thirty-two, containing six hundred and forty acres. All of section thirty four, containing six hundred and forty acres.

TOWNSHIP THIRTY-FOUR, RANGE EIGHTEEN.

All of section two, containing six hundred and forty acres and twenty-four hundredths of an acre. All of section four, containing six hundred and thirty-eight acres and ninety-four hundredths of an acre. Lots numbered one, two, three, four, five, six, seven, southwest quarter of northeast quarter, southeast of northwest quarter, east half of southwest quarter, and southeast quarter of southeast quarter of section six, containing four hundred and seventy-eight acres and
89 sixty-four hundredths of an acre. All of section eight, containing six hundred and forty acres. All of section ten, containing six hundred and forty acres. All of section twelve, containing six hundred and forty . All of section fourteen, containing six hundred and forty acres. All of section eighteen, containing six hundred and thirty-eight acres and eight hundredths of an acre. All of section twenty, containing six hundred and forty acres. All of section twenty-two, containing six hundred and forty acres. All of section twenty-four, containing six hundred and forty acres. All of section twenty-six, containing six hundred and forty acres. All of section twenty-eight, containing six hundred and forty acres. Northeast quarter east

half of northwest quarter, lots numbered one, two, three, four, and east half of southwest quarter of section thirty, containing four hundred and seventy-nine acres and eighteen hundredths of an acre. All of section thirty-two, containing six hundred and forty acres. All of section thirty-four, containing six hundred and forty acres.

TOWNSHIP THIRTY-FIVE, RANGE EIGHTEEN.

Lots numbered one, two, three, four of section two, containing one hundred and twenty-six acres and seventy hundredths of an acre. Lots numbered one, two, three, & four of section four, containing one hundred and twenty-seven acres and seventy hundredths of an acre.

TOWNSHIP THIRTY-THREE, RANGE NINETEEN.

Lots numbered six and seven. East half of southwest quarter
90 and southeast quarter of section six, containing three hundred and sixteen acres and sixty-eight hundredths of an acre. All of section eighteen, containing six hundred and thirty-four acres and thirty-eight hundredths of an acre. South half of section twenty, containing three hundred and twenty acres. All of section thirty, containing six hundred and thirty-six acres, and six hundredths of an acre. All of section thirty-two, containing six hundred and forty acres.

TOWNSHIP THIRTY-FOUR, RANGE NINETEEN.

Lots numbered two, three, four, southwest quarter of northeast quarter, south half of northwest quarter, southwest quarter, west half of southeast quarter, and southeast quarter of southeast quarter of section four, containing five hundred and twenty acres and eighteen hundredths of an acre. All of section six, containing six hundred and thirty-eight acres and nine hundredths of an acre. All of section eight, containing six hundred and forty acres. Southwest quarter of section ten, containing one hundred and sixty acres. West half of section fourteen, containing three hundred and twenty-acres. All of section eighteen, containing six hundred and thirty-seven acres and sixty-six hundredths of an acre. All of section twenty, containing six hundred and forty acres. Northeast quarter and west half of section twenty-two, containing four hundred and eighty acres. All of section twenty-six, containing six hundred and forty acres. Northwest quarter of section twenty-
91 eight, containing one hundred and sixty . All of section thirty, containing six hundred and thirty-nine acres and eighty-eight hundredths of an acre. All of section thirty-two, containing six hundred and forty acres. North half of section, and southeast quarter of section thirty-four, containing four hundred and eighty acres.

TOWNSHIP THIRTY-FIVE, RANGE NINETEEN.

Lots numbered one, two, three, four, of section two, containing one hundred and twelve acres and thirty hundredths of an acre. Lots numbered one, two, three, four, of section four, containing one hundred and eighteen acres and twenty-two hundredths of an acre. Lots numbered one, two, three, four, of section six, containing one hundred and twenty-four acres and fifty-one hundredths of an acre.

TOWNSHIP TWENTY-SIX, RANGE NINETEEN.

Lots numbered five, six, seven, eight, and east half of southeast quarter of section twenty-six, containing two hundred and eighty-seven acres and seventy hundredths of an acre.

TOWNSHIP TWENTY-SEVEN, RANGE NINETEEN.

Southeast quarter of southeast quarter of section two, containing forty acres. Northeast quarter and south half of section twelve, containing four hundred and eighty acres. North half of northeast quarter and south half of southeast quarter of section twenty-four, containing one hundred and sixty acres.

TOWNSHIP TWENTY-SIX, RANGE TWENTY.

92 Lots three, four, five, six, and south half of section twenty-six, containing five hundred and fifty-four acres and two hundredths of an acre. Lots numbered three, four, five, six, and south half of section twenty-eight, containing five hundred and forty-four acres and thirty-two hundredths of an acre. Lots numbered four, six, and eight, southeast quarter of southwest quarter, west half of southeast quarter, and southeast quarter of southeast quarter of section thirty, containing two hundred and ninety-five acres and eighty hundredths of an acre. All of section thirty-two, containing six hundred and forty acres. All of section thirty-four, containing six hundred and forty acres.

TOWNSHIP TWENTY-SEVEN, RANGE TWENTY.

Lots numbered one, two, three, four, south half of northeast quarter and south half of northwest quarter, west half of southwest quarter, northeast quarter of southwest quarter, east half of southeast quarter, and northwest quarter of southeast quarter of section two, containing five hundred and sixty-three acres and seventy-two hundredths of an acre. All of section four, containing six hundred and forty-four acres and eighty hundredths of an acre. Lots numbered one, two, five, six, seven, south half of northeast quarter, southeast quarter of northwest quarter, east half of southwest quarter, and southeast quarter of section six, containing five hundred and fifty-one acres and twenty-seven hundredths of an acre. Northeast quarter and west half of section eight, containing four hun-
93 dred and eighty acres. North half of northeast quarter, southwest quarter and south half of southeast quarter of section ten, containing three hundred and twenty acres. Northeast quarter and south half of section twelve, containing four hundred and eighty acres. Northeast quarter, east half of northwest quarter, and east half of southeast quarter of section fourteen, containing three hundred and twenty acres. Northeast quarter, east half of northwest quarter, lots numbered one and two, and southeast quarter of section eighteen, containing four hundred and seventy-two acres and nine hundredths of an acre. Northwest quarter and east half of section twenty, containing four hundred and eighty acres. Northwest quarter of section twenty-two, containing one hundred and sixty acres. Northeast quarter, east half of northwest quarter, southwest quarter of northwest quarter and south half of section twenty-four, containing six hundred acres. Northeast quarter, southeast quarter of northwest quarter, east half of southwest

quarter, southwest quarter of southwest quarter, and southeast quarter of section twenty-six, containing four hundred and eighty acres. Northeast quarter, east half of northwest quarter, northwest quarter of northwest quarter and southwest quarter of southwest quarter of section twenty-eight, containing three hundred and twenty acres. East half of southeast quarter of section thirty, containing eighty acres.
94 West half of northwest quarter, and northwest quarter of southwest quarter of section thirty-two, containing one hundred and twenty acres. East half of northeast quarter, southwest quarter of northeast quarter, southwest quarter of southwest quarter, and southeast quarter of section thirty-four, containing three hundred and twenty acres.

TOWNSHIP TWENTY-EIGHT, RANGE TWENTY.

Lots numbered one and two, south half of northeast quarter, and south half of section two, containing four hundred and eighty-one acres and ninety-four hundredths of an acre. Lots numbered one and two, and south half of northeast quarter of section four, containing one hundred and sixty acres and nine hundredths of an acre. Northeast quarter of northwest quarter of section eight, containing forty acres Northwest quarter of section ten, containing one hundred and sixty acres. West half of section twelve, containing three hundred and twenty acres.

TOWNSHIP TWENTY-SIX, RANGE TWENTY-ONE.

Southwest quarter and west half of southeast quarter of section twenty-eight, containing two hundred and forty acres. Lots numbered three, four, five, six, seven, & eight, east half of southwest quarter, and southeast quarter of section thirty, containing five hundred and forty-seven acres and fifty-three hundredths of an acre. All of section thirty-two, containing six hundred and forty acres.

TOWNSHIP TWENTY-SEVEN, RANGE TWENTY-ONE.

95 South half of northeast quarter, lots numbered three and four, south half of northwest quarter, and south half of section four, containing five hundred and sixty-one acres and twelve hundredths of an acre. All of section six, containing six hundred and twenty-one acres and seventy-eight hundredths of an acre. All of section eight, containing six hundred and forty acres. All of section ten, containing six hundred and forty acres. All of section eighteen, containing six hundred and twenty-two acres and ninety-eight hundredths of an acre. All of section twenty, containing six hundred and forty acres. All of section twenty-two, containing six hundred and forty acres. Southwest quarter and lots numbered three and four of section twenty-six, containing two hundred and twenty-three acres and sixty-three hundredths of an acre. Southwest quarter of northeast quarter, west half of northwest quarter, southeast quarter of northwest quarter, and northeast quarter of southeast quarter of section twenty-eight, containing two hundred acres. Northeast quarter, east half of northwest quarter, east half of southwest quarter, southeast quarter, and lots numbered one, two, three, and four, of section thirty, containing six hundred and twenty-four acres and seventy-four hundredths of an acre. Northeast quarter and south half of section thirty-two, containing four hundred and eighty acres. East half of section thirty-four, containing three hundred and twenty acres.

96 TOWNSHIP TWENTY-EIGHT, RANGE TWENTY-ONE.

Lots numbered six and seven, south half of northwest quarter, and southwest quarter of section two, containing three hundred and twenty acres and seventy-two hundredths of an acre. Lots numbered one and two, and south half of northeast quarter of section four, containing one hundred and sixty-one acres and twelve hundredths of an acre. Lots numbered one, two, three, four, five, six, and seven, south half of northeast quarter, southeast quarter of northwest quarter, and east half of southwest quarter of section six, containing four hundred and sixty-six acres and one hundredth of an acre. All of section ten, containing six hundred and forty acres. West half of section, and lots numbered seven and eight of section fourteen, containing three hundred and eighty-four acres and forty-five hundredths of an acre. North half of section twenty-two, containing three hundred and twenty acres. Lots numbered five and six of section twenty-six, containing sixty-four acres and eighty-eight hundredths of an acre.

TOWNSHIP TWENTY-NINE, RANGE TWENTY-ONE.

Southwest quarter, and lots numbered nine and ten, of section two, containing three hundred and twenty-five acres and twenty-eight hundredths of an acre. Lots numbered one and two, south half of northeast quarter, and southeast quarter of section four, containing three hundred and twenty acres and thirty-three hundredths of an acre.

97 North half of northeast quarter, northwest quarter, and south half of southeast quarter of section ten, containing three hundred and twenty acres. Lots numbered five and six, south half of northwest quarter and southwest quarter of section fourteen, containing three hundred and six acres and eight hundredths of an acre. Northwest quarter of section twenty-two, containing one hundred and sixty acres. Lots numbered seven and eight of section twenty-six, containing sixty-six acres and sixty-nine hundredths of an acre. Lot' numbered one and two, and southeast quarter of southwest quarter of section thirty-two, containing sixty-three acres and sixty hundredths of an acre.

TOWNSHIP THIRTY, RANGE TWENTY-ONE.

Lots numbered five, nine, eight, and ten, of section two, containing one hundred and thirty-four acres and fifty-two hundredths of an acre. Northeast quarter of section ten, containing one hundred and sixty acres. Lots numbered five and six of section fourteen, containing sixty-seven acres and forty-eight hundredths of an acre. Northeast quarter and east half of northwest quarter of section twenty-two, containing two hundred and forty acres. West half of southwest quarter of section twenty-six, containing eighty acres. The said tracts as above described in the foregoing pages, from one to fourteen inclusive, containing the aggregate area of ($127,843\frac{56}{100}$) one hundred and twenty-seven thousand eight hundred and forty-three acres and fifty-six hundredths of an acre.

98 Now know ye that the United States of America, in consideration of the premises, and pursuant to the said act of Congress, have given and granted, and by these presents do give and grant, unto the said Missouri, Kansas and Texas Railway Company, of Kansas, and its assigns, the tracts of land selected as aforesaid and described in

the foregoing, yet excluding "all mineral lands," should any such be found to exist in the tracts described in the foregoing:

To have and to hold the said tracts with the appurtenances thereof, unto the said Missouri, Kansas and Texas Railway Company, of Kansas, and its assigns forever. In testimony whereof I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent, and the seal of the General Land-Office to be hereunto affixed.

Given under my hand, at the city of Washington, this nineteenth day of February, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-sixth.

By the President—

[L. S.]

U. S. GRANT,
By J. PARISH, *Secretary.*
C. B. BOYNTON,
Recorder of the General Land-Office.

99 STATE OF KANSAS,
County of Montgomery, ss:

I, Geo. S. Beard, register of deeds in and for said county and State, do hereby certify that the foregoing is a true and correct copy of the patent from the United States to the Missouri, Kansas and Texas Railway Company, of Kansas, as the same was filed and recorded in the office of register of deeds in said county and State, on the tenth day of June, A. D. 1872, at 8 o'clock a. m., and recorded in book A of patents, from page 177 to page 190 inclusive.

In witness whereof I have hereunto subscribed my name and affixed my official seal on the 7th day of February, A. D. 1874.

[SEAL.]

GEO. S. BEARD,
Register of Deeds, Montgomery County, Kansas.

100 EXHIBIT C.

Copy of patent, No. 2, from the United States Government to the Missouri, Kansas & Texas Railway Company.

101 PATENT NO. 1, M., K. & TEXAS RAILWAY COMPANY, KANSAS.

United States of America to all to whom these presents shall come, greeting:

Whereas by the act of Congress, approved July 26th, 1866, entitled "An act granting lands to the State of Kansas to aid in the construction of a southern branch of the Union Pacific Railway and telegraph from Fort Riley, Kansas, to Fort Smith, Arkansas," authority is given to the Union Pacific Railway Company, south branch, now known as the Missouri, Kansas and Texas Railway Company, of Kansas, a corporation existing under the laws of said State, to construct a railroad and telegraph-line, under certain condition' and stipulations as expressed in said act, and provisions is made for granting to the State of Kansas, for the use and benefit of said railway company, every alternate section of land, or parts thereof designated by odd numbers, to the extents of five alternate sections per mile on each side of said road, and not exceeding in all ten section' per mile;

And whereas it is further enacted that in case it shall appear that the United States have, when the line of said road is definitely located, sold any sections, or any parts thereof granted as aforesaid, or that the

right of pre-emption or homestead settlement has attached to the same, then so much land is set apart to be selected for the purpose aforesaid nearest to the sections above specified, provided that said
102 lands hereby granted as indemnity "shall not be selected beyond twenty miles from the line of said road;"

And whereas it is further enacted by the 3rd section of the aforesaid acts that when the governor of the State of Kansas shall certify that any section of ten consecutive miles of said road is completed in a good, substantial, and workmanlike manner as a first-class railroad, patents shall issue to said company for the lands thereby granted;

And whereas it is indicated by letters of the Secretary of the Interior to the Commissioners of the General Land-Office, dated July 25th, 1870, and maps therewith duly certified by the governor of the State of Kansas, that the said Missouri, Kansas, and Texas Railway Company has fully completed and equipped, as required by the act, the said railroad from Junction City to the southern boundary of the State of Kansas;

And whereas certain tracts have been selected under the act aforesaid by Isaac T. Goodnow, land commissioner of the Missouri, Kansas and Texas Railway Company, as shown by the original list of selections, dated June 29th, 1871, certified under same date by the register and receiver at Humboldt, Kansas; the said tracts being described as follows, to wit:

103 *South of base-line and east of the sixth principal meridian, Kansas.*

TOWNSHIP TWENTY-NINE, RANGE TWENTY.

South half of the southwest quarter of section three, containing eighty acres. Lot number five of section fifteen, containing thirty-nine acres and eighty hundredths of an acre. Southeast quarter of southwest quarter of section fifteen, containing forty acres. North half of southwest quarter, and lots numbered three, four, and five, of section twenty three, containing one hundred and fifty-one acres and thirty hundredths of an acre. South half of northeast quarter, south half of southwest quarter, and southeast quarter of section twenty-seven, containing three hundred and twenty acres.

TOWNSHIP THIRTY, RANGE TWENTY.

West half of southwest quarter and lot numbered eight, ten, and eleven, of section one, containing one hundred and seventy-five acres and eighty hundredths of an acre. Lots numbered one, two, three, four, south half of northeast quarter, south half of northwest quarter, and southeast quarter of section three, containing four hundred and seventy-eight acres and fifty-six hundredths of an acre. Southwest quarter of northeast quarter, west half of southeast quarter and southeast quarter of southeast quarter of section nine, containing one hundred and sixty acres. Northwest quarter and southeast quarter of section
104 eleven, containing three hundred and twenty acres. Lots numbered one, two, three, and five, southwest quarter of northeast quarter, and southwest quarter of section thirteen, containing three hundred and twenty-five acres, and ninety hundredths of an acre. West half of section and southeast quarter of section fifteen, containing four hundred and eighty acres. Southeast quarter of section twenty-one, containing one hundred and sixty acres. Southwest quarter and east half of section twenty-three, containing four hundred and eighty acres. South

half of northwest quarter and south half of section twenty-five, containing four hundred acres. All of section twenty-seven, containing six hundred and forty acres. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY-ONE, RANGE TWENTY.

Lots numbered one and four, southeast quarter of northeast quarter, southwest quarter of northwest quarter, and southwest quarter of section one, containing three hundred and twenty-one acres and four hundredths of an acre. All of section three, containing six hundred and forty-two acres and fifty-six hundredths of an acre. Lot numbered one and southeast quarter of northeast quarter of section five, containing eighty acres and sixteen hundredths of an acre. All of section nine, containing six hundred and forty acres. All of section eleven,
105 containing six hundred and forty acres. Northeast quarter and southwest quarter of section thirteen, containing three hundred and twenty acres. All of section fifteen, containing six hundred and forty acres. East half of northeast quarter and east half of southeast quarter of section seventeen, containing one hundred and sixty acres. All of section twenty-one, containing six hundred and forty acres. Southwest quarter and north half of section twenty-three, containing four hundred and eighty acres. Northeast quarter and south half of section twenty-five, containing four hundred and eighty acres. South half of section twenty-seven, containing three hundred and twenty acres. Northeast quarter, and southwest quarter of section thirty-three, containing three hundred and twenty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY-TWO, RANGE TWENTY.

Lot' numbered one, two, three, and four, south half of northeast quarter, south half of northwest quarter, and southwest quarter of section one, containing four hundred and eighty-one acres and six hundredths of an acre. All of section three, containing six hundred and forty-one acres and forty-four hundredths of an acre. Northeast quarter of section nine, containing one hundred and sixty acres. Southeast quarter and north half of section eleven, containing four hundred and eighty acres. All of section thirteen, containing six hundred and
106 forty acres. Northeast quarter and north half of southeast quarter of section fifteen, containing two hundred and forty acres. Southeast quarter and west half of section twenty-one, containing four hundred and eighty acres. Southwest quarter and north half of section twenty-three, containing four hundred and eighty acres. All of section twenty-five, containing six hundred and forty acres. South half of northeast quarter and northwest quarter of section twenty-seven, containing two hundred and forty acre'. Northeast quarter of section thirty-five, containing one hundred and sixty acres.

TOWNSHIP THIRTY-THREE, RANGE TWENTY.

Lots numbered three and four, south half of northwest quarter, and south half of section one, containing four hundred and twenty-eight acres and ninety seven hundredth' of an acre. Southwest quarter and southwest quarter of northeast quarter of section three, containing two hundred acres. East half of northwest quarter, east half of southwest

quarter, and east half of section nine, containing four hundred and eighty acres. North half of northeast quarter, southwest quarter, and south half of southeast quarter of section eleven, containing three hundred and twenty acres. Southwest quarter and north half of
107 section thirteen, containing four hundred and eighty acres. North half of section, southwest quarter, east half of southeast quarter, and southwest quarter of southeast quarter of section fifteen, containing six hundred acres. East half of northwest quarter, east half of southwest quarter, and east half of section twenty-one, containing four hundred and eighty acres. Southeast quarter and west half of section twenty-three, containing four hundred and eighty acres. Southeast quarter and north half of section twenty-five, containing four hundred and eighty acres. All of section twenty-seven, containing six hundred and forty acres. East half of northeast quarter and east half of southeast quarter of section twenty-nine, containing one hundred and sixty acres. Southwest quarter and north half of section thirty-three, containing four hundred and eighty acres. Southwest quarter of section thirty-five, containing one hundred and sixty acres.

TOWNSHIP THIRTY-FOUR, RANGE TWENTY.

Lot number four, of section one, containing forty acres and twenty-one hundredths of an acre. Lot' numbered one and two, and south half of northeast quarter of section three, containing one hundred and fifty-nine acres and eighty-eight hundredth' of an acre. Lot number one, and southeast quarter of northeast quarter and east half of southeast quar-
108 ter of section five, containing one hundred and *and* sixty acres and forty-six hundredth' of an acre. West half of northwest quarter, southwest quarter, west half of southeast quarter, and southeast quarter of southeast quarter of section nine, containing three hundred and sixty acres. East half of northeast quarter, northwest quarter of northeast quarter, south half of southwest quarter, and southeast quarter of section eleven, containing three hundred and sixty acres. Southwest quarter of section thirteen, containing one hundred and sixty acres. North half of northwest quarter, southwest quarter of northeast quarter, south half of southwest quarter, and southeast quarter of section fifteen, containing three hundred and sixty acres. East half of northwest quarter, east half of southwest quarter, and east half of section seventeen, containing four hundred and eighty acres. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containig six hundred and forty acres. Northeast quarter of section twenty-five, containing one hundred and sixty acres. All of section twenty-seven, containing six hundred and forty acres. Northeast quarter, east half of northwest quarter, southwest quarter of northwest quarter, and south half of section twenty-nine, containing six hundred acres. East half of northeast quarter and east half of southeast quarter of sec-
109 tion thirty-one, containing one hundred and sixty acres. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY-FIVE, RANGE TWENTY.

Lots numbered one and two of section one, containing eighty-one acres and twelve hundredth' of an acre. Lot' numbered one and two of section three, containing ninety acres and eighty hundredths of an acre. Lots numbered one and two of section five, containing one hundred acres and forty-eight hundredths of an acre.

TOWNSHIP THIRTY, RANGE TWENTY-ONE.

Southwest quarter of section five, containing one hundred and sixty acres. Northeast quarter and southeast quarter of section seven, containing three hundred and eighteen acres. Northwest quarter of section seventeen, containing one hundred and sixty acres. Lots numbered four and five of section nineteen, containing one hundred and four acres and sixty hundredths of an acre. West *west* half of southwest quarter and east half of southeast quarter of section twenty-one, containing one hundred and sixty acres. Lots numbered seven and eight of section twenty-nine, containing seventy-eight acres. All of section thirty-one, containing six hundred and forty acres. North half of northeast quarter, east half of northwest quarter, northwest quarter of northwest quarter, and lot' numbered one, two, three, and four of section
110 thirty-three, containing three hundred and eighty acres and forty hundredth' of an acre. East half of northwest quarter and west half of southwest quarter of section thirty-five, containing one hundred and sixty acres.

TOWNSHIP THIRTY-ONE, RANGE TWENTY-ONE.

South half of southwest quarter of section three, containing eighty acres. East half of southwest quarter and southeast quarter of section five, containing two hundred and forty acres. West half of northeast quarter, east half of northwest quarter, east half of southwest quarter, southeast quarter, and lot' numbered one, two, three, and four of section seven, containing five hundred and forty-one acres and thirty hundredth' of an acre. Lots numbered two and three, northeast quarter of southwest quarter, and east half of southeast quarter of section nine, containing two hundred and twenty-five acre' and two hundredths of an acre. Lots number one and north half of southwest quarter of section eleven, containing one hundred and eleven acres and thirty hundredth' of an acre. East half of southwest quarter and west half of southeast quarter of section fifteen, containing one hundred and sixty acres. East half of southwest quarter and southeast quarter of section seventeen, containing two hundred and forty acres. West
111 half of northeast quarter, northeast quarter of northwest quarter of southeast quarter of southwest quarter, and lots numbered one and four, of section nineteen, containing two hundred and thirty-one acres and sixty-two hundredth' of an acre. Lot number two, east half of northwest quarter, and southwest quarter of section twenty-one, containing two hundred and sixty-four acres and sixty-eight hundredth' of an acre. Lot number one of section twenty-three, containing thirty-three acres and ninety-six hundredth' of an acre. Northeast quarter of northeast quarter, southeast quarter of southwest quarter, and southwest quarter of southeast quarter of section twenty-seven, containing one hundred and twenty acres. Northwest quarter of section twenty-nine, containing one hundred and sixty acres. South half of northeast quarter and southeast quarter of section thirty-one, containing two hundred and forty acres. Lots numbered one, two, six, eight, nine, and ten, northwest quarter, west half of southwest quarter. and northeast quarter of southwest quarter of section thirty-three, containing four hundred and fifty-four acres and nineteen hundredths of an acre. Southwest quarter and lot number two of section thirty-five, containing one hundred and ninety-seven acres and forty-two hundredth' of an acre.

112 TOWNSHIP THIRTY-TWO, RANGE TWENTY-ONE.

Lots number two, three, four, and five, and south half of northwest quarter of section three, containing two hundred and thirty-nine acres and seventy-two hundredth' of an acre. Lot' numbered one, two, three, and four, south half of northeast quarter, south half of northwest quarter, and southeast quarter of section five, containing four hundred and eighty acres and eighty-two hundredth' of an acre. East half of northwest quarter and lot' numbered one and two of section seven, containing one hundred and fifty-two acres and sixty-nine hundredth' of an acre. Southwest quarter and lot number two of section eleven, containing two hundred acres and eleven hundredths of an acre. Northeast quarter of section fifteen, containing one hundred and sixty acres. Southwest quarter and south half of southeast quarter of section seventeen, containing two hundred and forty acres. Southeast quarter of southeast quarter of section nineteen, containing forty acres. Lots numbered one, four, and five, and northwest quarter of northeast quarter of section twenty-one, containing one hundred and thirty-one acres and thirty hundredths of an acre. Lot number one and southwest quarter of section twenty-three, containing two hundred and two acres and eighteen hundredth' of an acre. Lot' numbered one and two and southeast
113 quarter of section twenty-seven, containing two hundred and thirty-five acres and ninety hundredth' of an acre. Northeast quarter, east half of northwest quarter, southwest quarter, and north half of southeast quarter of section twenty-nine, containing four hundred and eighty acres. All of section thirty-one, containing six hundred and thirty-one acres and four hundredth' of an acre. Lots numbered one, five, six, and eight, and north half of northwest quarter of section thirty-three, containing two hundred and twenty-four acres and ninety hundredth' of an acre. Lot' numbered one and two, and northwest quarter and southwest quarter, of section thirty-five, containing four hundred and ten acres and forty-eight hundredths of an acre.

TOWNSHIP THIRTY-THREE, RANGE TWENTY-ONE.

Lots numbered one, two, three, four, five, and six, and south half of northeast quarter, southeast quarter of northwest quarter, east half of southwest quarter, and southeast quarter of section three, containing five hundred and forty-six acres and sixty-three hundredth' of an acre. Southeast quarter of section five, containing one hundred and sixty acres. Southeast quarter of section seven, containing one hundred and sixty acres. Lots numbered one, two, six, and seven, and southwest quarter of section nine, containing two hundred and ninety-six
114 acres and forty hundredths of an acre. West half of northwest quarter, southwest quarter and lot number two of section eleven, containing two hundred and eighty-eight acres and thirty hundredths of an acre. Lots numbered two, four, five, southwest quarter of northeast quarter of section fifteen, containing one hundred and fifty-seven acres and forty hundredths of an acre. Northeast quarter, east half of northwest quarter, and northeast quarter of southwest quarter, and north half of southeast quarter, and lots numbered three and four of section nineteen, containing four hundred and twenty eight acres and twenty-three hundredth' of an acre. Southwest quarter and east half of section twenty-seven, containing four hundred and eighty acres. East half of northwest quarter, southwest quarter of northwest quarter, east half of southwest quarter, and southeast quarter of section twenty-nine

containing three hundred and sixty acres. Southeast quarter of section thirty-one, containing one hundred and sixty acres. West half of southeast quarter of section thirty-three, containing eighty acres. Lot number eight of section thirty-five, containing forty-seven acres and thirty hundredths of an acre.

TOWNSHIP THIRTY-FOUR, RANGE TWENTY-ONE.

115 Southwest quarter of northwest quarter, and northwest quarter of southwest quarter of section three, containing eighty acres. Southeast quarter of section five, containing one hundred and sixty acres. East half of section seven, containing three hundred and twenty acres. West half of northeast quarter, southeast quarter of northeast quarter, northwest quarter, north half of southwest quarter, and southeast quarter of section nine, containing five hundred and twenty acres. East half of northwest quarter, and northwest quarter of northwest quarter of section eleven, containing one hundred and twenty acres. West half of northwest quarter, west half of southwest quarter, southeast quarter of southwest quarter, and southwest quarter of southeast quarter of section fifteen, containing two hundred and forty acres. Northeast quarter and west half of southeast quarter of section seventeen, containing two hundred and forty acres. East half of section twenty-one, containing three hundred and twenty acres. Southwest quarter of northwest quarter, southwest quarter, and lot number six of section twenty three, containing two hundred and fifty-nine acres and eighteen hundredths of an acre. West half of northwest quarter, northeast quarter of northwest quarter, and west half of southeast
116 quarter of section twenty-seven, containing two hundred acres. South half of section twenty-nine, containing three hundred and twenty acres. All of section thirty-one, containing six hundred and forty acres and sixty-eight hundredth' of an acre. Northeast quarter, north half of northwest quarter, south half of southwest quarter of section thirty-three, containing three hundred and twenty acres. Lot number six of section thirty-five, containing thirty acres and fifty-two hundredths of an acre.

TOWNSHIP THIRTY-FIVE, RANGE TWENTY-ONE.

Lots numbered one and two of section five, containing seventy acres

South of base line and east of sixth principal meridian, Kansas.—Twenty miles indemnity limits.

TOWNSHIP TWENTY-NINE, RANGE SEVENTEEN.

Lot number two of section thirty-two, containing thirty-nine acres and eighty-seven hundredth' of an acre.

TOWNSHIP THIRTY, RANGE SEVENTEEN.

Lots numbered one and two and east half of section eight, containing three hundred and ninety-six acres and four hundredths of an acre. Lots numbered one and two, and southeast quarter of section twenty, containing two hundred and thirty-one acres and forty-eight hun-
117 dredths of an acre. All of section twenty-two, containing six hundred and forty acres. All of section twenty-eight, containing

six hundred and forty acres. Lots numbered one and two, and east half of section thirty-two, containing three hundred and eighty-seven acres and sixteen hundredths of an acre. All of section thirty-four, containing six hundred and forty acres.

TOWNSHIP THIRTY-ONE, RANGE SEVENTEEN.

Lots numbered two, three, four, south half of northeast quarter, south half of northwest quarter, and south half of section two, containing six hundred and four acres and seventy-seven hundredth' of an acre. All of section four, containing six hundred and forty-four acres and forty-two hundredth' of an acre. Lots numbered one, two, three, four, and east half of section eight, containing five hundred and forty-two acres and ninety-four hundredth' of an acre. All of section ten, containing six hundred and forty acres. West half of northeast quarter, west half of southeast quarter, and west half of section twelve, containing four hundred and eighty acres. All of section fourteen, containing six hundred and forty acres. Lots numbered one, two, three, four, and southeast quarter of section twenty, containing three hundred and seventy-nine acres and twenty-hundredth' of an acre. All of section twenty-two, containing six hundred and forty acres. All of section
118 twenty-four, containing six hundred and forty acres. All of section twenty-six, containing six hundred and forty acres. All of section twenty-eight, containing six hundred and forty acres. Lots numbered one, two, three, four, and east half of section thirty-two, containing five hundred and thirty-one acres and thirty-six hundredths of an acre. All of section thirty-four, containing six hundred and forty acres.

TOWNSHIP THIRTY-TWO, RANGE SEVENTEEN.

All of section two, containing six hundred and forty-one acres and four hundredths of an acre. All of section four, containing six hundred and forty acres and fifty-eight hundredth' of an acre. Lots numbered one, two, three, four, and east half of section eight, containing five hundred and twenty-two acres and seventy-eight hundredths of an acre. All of section ten, containing six hundred and forty acres. All of section twelve, containing six hundred and forty acres. All of section fourteen, containing six hundred and forty acres. Lots numbered one two, three, four and east half of section twenty, containing five hundred and twelve acres and thirty-eight hundredth' of an acre. All of section twenty-two, containing six hundred and forty acres. North half of section, east half of south-west quarter and southeast quarter of section twenty-
119 four, containing five hundred and sixty acres. North half of northwest quarter, south half of southeast quarter of section twenty-six, containing one hundred and sixty acres. All of section twenty-eight, containing six hundred and forty acres. Lots numbered one, two, three, four, and east half of section thirty-two, containing five hundred and three acres and four hundredths of *of* an acre. East half of section, northwest quarter of northwest quarter, and southwest quarter of section thirty-four, containing five hundred and twenty acres.

TOWNSHIP THIRTY-THREE, RANGE SEVENTEEN.

All of section two, containing six hundred and thirty-nine acres and sixty-two hundredths of an acre. Lots numbered three and four, and south half of northwest quarter, and south half of section four, contain-

ing four hundred and seventy-nine acres and eleven hundredths of an acre. East half of northeast quarter and southeast quarter of section eight, containing two hundred and forty acres. All of section ten, containing six hundred and forty acres. All of section twelve, containing six hundred and forty acres. All of section fourteen, containing six hundred and forty acres. All of section twenty-two, containing six hundred and forty acres. East half of northeast quarter, west half of northwest quarter, and south half of section twenty-four, containing four
120 hundred and eighty acres. All of section twenty-six, containing six hundred and forty acres.

TOWNSHIP THIRTY-FOUR, RANGE SEVENTEEN.

All of section two, containing six hundred and forty acres and sixty-four hundredths of an acre. Northwest quarter of northeast quarter, northwest quarter, and south half of section twelve, containing five hundred and twenty acres. Northeast quarter, east half of northwest quarter, southwest quarter of northwest quarter, north half of southwest quarter, and north half of southeast quarter of section twenty-four, containing four hundred and forty acres.

TOWNSHIP THIRTY-ONE, RANGE EIGHTEEN.

All of section eighteen, containing six hundred and twenty-one acres and eighteen hundredth' of an acre. Northeast quarter of northwest quarter, and lot number one of section thirty, containing seventy-five acres and forty-four hundredths of an acre. Northeast quarter and southwest quarter of section thirty-two, containing three hundred and twenty acres.

TOWNSHIP THIRTY-TWO, RANGE EIGHTEEN.

Lots numbered one, two, three, four, and five, south half of northeast quarter, and southeast quarter of northwest quarter of section six, containing three hundred and twelve acres and twenty-seven hundredths of an acre. East half of section eight, containing three hundred and twenty acres. South half of section ten, containing three hun-
121 dred and twenty acres. Southeast quarter of northeast quarter, lots numbered one and two, and southeast quarter of northwest quarter of section eighteen, containing one hundred and fifty-three acres and seventy-eight hundredth' of an acre. All of section twenty, containing six hundred and forty acres. Northeast quarter, and west half of section twenty-two, containing four hundred and eighty acres. North half of section twenty-six, containing three hundred and twenty acres. Northeast quarter and south half of section twenty-eight, containing four hundred and eighty acres. All of section thirty, containing six hundred and twenty-eight acres and ninety-eight hundredths of an acre. All of section thirty-two, containing six hundred and forty acres. Northwest quarter, and south half of section thirty-four, containing four hundred and eighty acres.

TOWNSHIP THIRTY-THREE, RANGE EIGHTEEN.

All of section two, containing six hundred and forty-one acres and sixty-three hundredths of an acre. All of section four, containing six hundred and forty acres and eighty-eight hundredths of an acre. All

of section six, containing six hundred and twenty-eight acres and twenty-four hundredth' of an acre. All of section eight, containing six hundred and forty acres. Northwest quarter and south half
122 section ten, containing four hundred and eighty acres. All of section twelve, containing six hundred and forty acres. All of section fourteen, containing six hundred and forty acres. All of section eighteen, containing six hundred and thirty-two acres and twenty-six hundredths of an acre. North half of section and southeast quarter of section twenty, containing four hundred and eighty acres. All of section twenty-two, containing six hundred and forty acres. All of section twenty-four, containing six hundred and forty acres. All of section twenty-six, containing six hundred and forty acres. Northwest quarter of northeast quarter, and west half of section; west half of southeast quarter, and southeast quarter of southeast quarter of section twenty-eight, containing four hundred and eighty acres. All of section thirty, containing six hundred and thirty-five acres and seventy-eight hundredth' of an acre. All of section thirty-two, containing six hundred and forty acres. All of section thirty-four, containing six hundred and forty acres.

TOWNSHIP THIRTY-FOUR, RANGE EIGHTEEN.

All of section two, containing six hundred and forty acres and twenty-four hundredths of an acre. All of section four, containing six hundred and thirty-eight acres and ninety-four hundredths of an
123 acre. Lots numbered one, two, three, four, five, six, seven, southwest quarter of northeast quarter, southeast quarter of northwest quarter, east half of southwest quarter, and southeast quarter of southeast quarter of section six, containing four hundred and seventy-eight acres and sixty-four hundredth' of an acre. All of section eight, containing six hundred and forty acre'. All of section ten, containing six hundred and forty acres. All of section twelve, containing six hundred and forty acres. All of section fourteen, containing six hundred and forty acres. All of section eighteen, containing six hundred and thirty-eight acres and eight hundredths of an acre. All of section twenty, containing six hundred and forty acres. All of section twenty-two, containing six hundred and forty acres. All of section twenty-four, containing six hundred and forty acres. All of section twenty-six, containing six hundred and forty acres. All of section twenty-eight, containing six hundred and forty acres. Northeast quarter, east half of northwest quarter, lots numbered one, two, three, four, and east half of southwest quarter of section thirty, containing four hundred and seventy-nine acres and eighteen hundredth' of an acre. All of section thirty-two, containing six hundred and forty acres. All of section thirty-four, containing six hundred and forty acres.

TOWNSHIP THIRTY-FIVE, RANGE EIGHTEEN.

124 Lots numbered one, two, three, four, of section two, containing one hundred and twenty-six acres and seventy hundredths of and acres. Lots numbered one, two, three, and four, of section four, containing one hundred and twenty-seven acres and seventy hundredth' of an acre.

TOWNSHIP THIRTY-THREE, RANGE NINETEEN.

Lots numbered six and seven, east half of southwest quarter, and southeast quarter of section six, containing three hundred and sixteen

acres and sixty-eight hundredth' of an acre. All of section eighteen, containing six hundred and thirty-four acres and thirty-eight hundredth' of an acre. South half of section twenty, containing three hundred and twenty acres. All of section thirty, containing six hundred and thirty-six acres and six hundredths of an acre. All of section thirty-two, containing six hundred and forty acres.

TOWNSHIP THIRTY-FOUR, RANGE NINETEEN.

Lots numbered two, three, four, southwest quarter of northeast quarter, south half of northwest quarter, southwest quarter, west half of southeast quarter, and southeast quarter of southeast quarter of section four, containing five hundred and twenty acres and eighteen hundredth' of an acre. All of section six, containing six hundred
125 and thirty-eight acre' and nine hundredth' of an acre. All of section eight, containing six hundred and forty acres. Southwest quarter of section ten, containing one hundred and sixty acres. West half of section fourteen, containing three hundred and twenty acres. All of section eighteen, containing six hundred and thirty-seven acres and sixty-six hundredth' of an acre. All of section twenty, containing six hundred and forty acres. Northeast quarter and west half of section twenty-two, containing four hundred and eighty acre'. All of section twenty-six, containing six hundred and forty acres. Northwest quarter of section twenty-eight, containing one hundred and sixty acres. All of section thirty, containing six hundred and thirty-nine acres and eighty-eight hundredths of an acre. All of section thirty-two, containing six hundred and forty acres. North half of section and southeast quarter of section thirty-four, containing four hundred and eighty acres.

TOWNSHIP THIRTY-FIVE, RANGE NINETEEN.

Lots numbered one, two, three, four, of section two, containing one hundred and twelve acres and thirty hundredth' of an acre. Lots numbered one, two, three, four, of section four, containing one hundred and eighteen acres and twenty-two hundredths of an acre. Lots numbered one, two, three, four, of section six, containing one hundred and twenty-four acres and fifty-one hundredth' of an acre.

126 TOWNSHIP TWENTY-SIX, RANGE NINETEEN.

Lots numbered five, six, seven, eight, and east half of southeast quarter of section twenty-six, containing two hundred and eighty-seven acres and seventy hundredth' of an acre.

TOWNSHIP TWENTY-SEVEN, RANGE NINETEEN.

Southeast quarter of southeast quarter of section two, containing forty acres. Northeast quarter and south half of section twelve, containing four hundred and eighty acres. North half of northeast quarter and south half of southeast quarter of section twenty-four, containing one hundred and sixty acres.

TOWNSHIP TWENTY-SIX, RANGE TWENTY.

Lots three, four, five, six, and south half of section twenty-six, containing five hundred and fifty-four acres and two hundredth' of an acre.

Lot' numbered three, four, five, six, and south half of section twenty-eight, containing five hundred and forty-four acres and thirty-two hundredths of an acre. Lots numbered four, six, and eight, southeast quarter of southwest quarter, west half of southeast quarter, and southeast quarter of southeast quarter of section thirty, containing two hundred and ninety-five acres and eighty hundredth' of an acre. All of section thirty-four, containing six hundred and forty acres.

TOWNSHIP TWENTY-SEVEN, RANGE TWENTY.

127 Lots numbered one, two, three, four, south half of northeast quarter, and south half of northwest quarter, west half of southwest quarter, northeast quarter of southwest quarter, east half of southeast quarter, and northwest quarter of southeast quarter of section two, containing five hundred and sixty-three acres and seventy-two hundredth' of an acre. All of section four, containing six hundred and forty-four acres and eighty hundredths of an acre. Lots numbered one, two, five, six, seven, south half of northeast quarter, southeast quarter of northwest quarter, east half of southwest quarter, and southeast quarter of section six, containing five hundred and fifty-one acres and twenty-seven hundredth' of an acre. Northeast quarter and west half of section eight, containing four hundred and eighty acres. North half of northeast quarter, southwest quarter and south half of southeast quarter of section ten, containing three hundred and twenty acres. Northeast quarter and south half of section twelve, containing four hundred and eighty acres. Northeast quarter, east half of northwest quarter and east half of southeast quarter of section fourteen, containing three hundred and twenty acres. Northeast quarter, east half of northwest quarter, lot' numbered one and two, and southeast
128 quarter of section eighteen, containing four hundred and seventy-two acres and nine hundredth' of an acre. Northwest quarter and east half of section twenty, containing four hundred and eighty acres. Northwest quarter of section twenty-two, containing one hundred and sixty acres. Northeast quarter, east half of northwest quarter, southwest quarter of northwest quarter, and south half of section twenty-four, containing six hundred acres. Northeast quarter, southeast quarter of northwest quarter, east half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of section twenty-six, containing four hundred and eighty acres. Northeast quarter, east half of northwest quarter, *northwest quarter*, northwest quarter of northwest quarter, and southwest quarter of southwest quarter of section twenty-eight, containing three hundred and twenty acres. East half of southeast quarter of section thirty, containing eighty acres. West half of northwest quarter and northwest quarter of southwest quarter of section thirty-two, containing one hundred and twenty acres. East half of northeast quarter, southwest quarter of northeast quarter, southwest quarter of southwest quarter, and southeast quarter of section thirty-four, containing three hundred and twenty acres.

TOWNSHIP TWENTY-EIGHT, RANGE TWENTY.

Lots numbered one and two, south half of northeast quarter,
129 and south half of section two, containing four hundred and eighty-one acres and ninety-four hundredth' of an acre. Lots numbered one and two, and south half of northeast quarter of section four, con-

taining one hundred and sixty acres and nine hundredth' of an acre. Northeast quarter of northwest quarter of section eight, containing forty acres. Northwest quarter of section ten, containing one hundred and sixty acres. West half of section twelve, containing three hundred and twenty acres.

TOWNSHIP TWENTY-SIX, RANGE TWENTY-ONE.

Southwest quarter and west half of southeast quarter of section twenty-eight, containing two hundred and forty acres. Lots numbered three, four, five, six, seven, and eight, east half of southwest quarter, and southwest quarter of section thirty, containing five hundred and forty-seven acres and fifty-three hundredth' of an acre. All of section thirty-two, containing six hundred and forty acres.

TOWNSHIP TWENTY-SEVEN, RANGE TWENTY-ONE.

South half of the northeast quarter, lot numbered three and four, south half of northwest quarter, and south half of section four, containing five hundred and sixty-one acres and twelve hundredth' of an acre.

All of section six, containing six hundred and twenty-one acres
130 and seventy-eighth hundredth' of an acre. All of section eight, containing six hundred and forty acres. All of section ten, containing six hundred and forty acres. All of section eighteen, containing six hundred and twenty-two acres and ninety-eight hundredth' of an acre. All section twenty, containing six hundred and forty acres. All of section twenty-two, containing six hundred and forty acres. Southwest quarter, and lots numbered three and four, of section twenty-six, containing two hundred and twenty three acres and sixty-three hundredth' of an acre. Southwest quarter of northeast quarter, west half of northwest quarter, southeast quarter of northwest quarter, and northeast quarter of southeast quarter of section twenty-eight, containing two hundred acres. Northeast quarter, east half of northwest quarter, east half of southwest quarter, southeast quarter, and lot numbered one, two, three, and four, of section thirty, containing six hundred and twenty-four acres and seventy-four hundredths of an acre. Northeast quarter and south half of section thirty-two containing four hundred and eighty acres. East half of section thirty-four, containing three hundred and twenty acres.

131 TOWNSHIP TWENTY-EIGHT, RANGE TWENTY-ONE.

Lots numbered six and seven, south half of northwest quarter, and southwest quarter of section two, containing three hundred and twenty acres and seventy-two hundredths of an acre. Lots numbered one and two, and south half of northeast quarter of section four, containing one hundred and sixty-one acres and twelve hundredth' of an acre. Lots numbered one, two, three, four, five, six, and seven, south half of northeast quarter, southeast quarter of northwest quarter, and east half of southwest quarter of section six, containing four hundred and sixty-six acres and one hundredth' of an acre. All of section ten, containing six hundred and forty acres. West half of section and lots numbered seven and eight, of section fourteen, containing three hundred and eighty-four acres and forty-five hundredth' of an acre. North half of section twenty-two, containing three hundred and twenty acre'. Lots numbered five and six, of section twenty-six, containing sixty-four acres and eighty-eight hundredth' of an acre.

TOWNSHIP TWENTY-NINE, RANGE TWENTY-ONE.

Southwest quarter and lots numbered nine and ten, of section two containing three hundred and twenty-five acres and twenty-eight
132 hundredths of an acre. Lots numbered one and two, south half of northeast quarter, and southeast quarter of section four, containing three hundred and twenty acres and thirty-three hundredth' of an acre. North half of northeast quarter, northwest quarter, and south half of southeast quarter of section ten, containing three hundred and twenty acres. Lots numbered five and six, south half of northwest quarter, and southwest quarter of section fourteen, containing three hundred and six acre' and eight hundredth' of an acre. Northwest quarter of section twenty-two, containing one hundred and sixty acres. Lots numbered seven and eight, of section twenty-six, containing sixty-six acres and sixty-nine hundredth' of an acre. Lots numbered one and two, and southeast quarter of southwest quarter of section thirty-two, containing sixty-three acres and sixty hundredths of an acre.

TOWNSHIP THIRTY, RANGE TWENTY-ONE.

Lots numbered five, nine, eight, and ten, of section two, containing one hundred and thirty-four acres and fifty-two hundredth' of an acre. Northeast quarter of section ten, containing one hundred and sixty acres. Lots numbered five and six, of section fourteen, containing sixty-seven acres and forty-eight hundredth' of an acre. Northeast quarter, and east half of northwest quarter of section twenty-two, containing two
133 hundred and forty acres. West half of southwest quarter of section twenty-six, containing eighty acres—

This said tract as described in the foregoing pages, from one to fourteen, inclusive, containing the aggregate area of (127,843 $\frac{56}{100}$) one hundred and twenty-seven thousand eight hundred and forty-three acres and fifty-six hundredths of an acre:

Now, know all ye, that the United States of America, in consideration of the premises and pursuant to the said act of Congress, have given and granted, and by these presents do give and grant unto the said Missouri, Kansas and Texas Railway Company of Kansas, and its assigns, the tracts of land selected as aforesaid, and described in the foregoing, yet excluding all mineral land should any such be found to exist in the tracts described in the foregoing:

To have and to hold the said tracts, with the appurtenances thereof, unto the said Missouri, Kansas and Texas Railway Company of Kansas, and its assignes forever.

In testimony whereof I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent, and the seal of the General Land-Office to be hereunto affixed. Given under my hand at the *the* city of Washington, this nineteenth day of February,
134 in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-sixth.

By the President:

[U. S. G'N. LA'D OFF. SEAL.]

U. S. GRANT,
By J. PARISH, *Secretary.*

C. B. BOYNTON,
Recorder of the General Land-Office.

This instrument was filed for record on the 4th day of March, A. D. 1872, at 2 o'clock p. m.

J. W. PATRICK,
Register of Deeds, Labette County, Kansas.

This instrument is recorded in book F of deeds, from page 324 to 340, inclusive.

STATE OF KANSAS,
County of Labette, ss:

I, J. W. Patrick, register of deeds in and for said county, do hereby certify that the foregoing is a true and correct copy of the original patent No. 1, from the U. S. Government to the M., K. and T. Railway Company, as recorded in my office.

Given under my hand and official seal, at Oswego, this 17th day of February, A. D. 1874.

[SEAL.]

J. W. PATRICK,
Register of Deeds.

135 EXHIBIT D.

Copy of patent No. 2, from United States Government to Missouri, Kansas and Texas Railway Company.

136 Patent No. 2, Missouri, Kansas & Texas Railway Company, Kansas.

United States of America to all to whom these presents shall come' greeting:

Whereas, by the act of Congress appeared July 26th, 1866, entitled An act granting lands to the State of Kansas to aid in the construction of a southern branch of the Union Pacific Railway and Telegraph from Fort Riley, Kansas, to Fort Smith, Arkansas, authority is given to the Union Pacific Railway Company, South Branch, now known as the Missouri, Kansas and Texas Railway Company, of Kansas, a corporation existing under the laws of said State, to construct a railroad and telegraph line under certain conditions and stipulations, as expressed in said act, and provisions *is* made for granting to the State of Kansas, for the use and benefit of said railroad company, every alternate section of land or parts thereof designated by odd numbers to the extent of five alternate sections per mile on each side of said road, and not exceeding in all ten sections per mile; and whereas it is further enacted that, in case it shall appear that the United States have, when the line of said road is definitely located, sold any section or any part thereof
137 granted as aforesaid, or that the right of pre-emption or homestead settlements has attached to the same, then so much land is set apart to be selected for the purpose aforesaid nearest to the sections above specified, provided that said lands hereby granted as indemnity shall not be selected beyond twenty miles from the line of said road;

And whereas it is further enacted by the 3d section of the aforesaid act that when the governor of the State of Kansas shall certify that any section of ten consecutive miles of said road is completed in a good, substantial, and workmanlike manner, as a first-class railroad, patent shall issue to said company for the lands hereby granted;

And whereas it is indicated by letters of the Secretary of the Interior to the Commissioner of the General Land-Office, dated July 25th, 1870,

and map therewith, duly certified by the governor of the State of Kansas, that the said Missouri, Kansas and Texas Railway Company has fully completed and equipped, as required by the act, the said railroad from Junction City to the southern boundary of the State of Kansas;

And whereas certain tracts have been selected under the act aforesaid by Isaac T. Goodnow, land-commissioner of the Missouri, Kansas and Texas Railway Company, as shown by the original list of selec-
138 tion, dated June 29th, 1871, certified under same date by the register and receiver at Humboldt, Kansas; the said tracts being described as follows, to wit:

South of base line and east of sixth principal meridian, Kansas.

TOWNSHIP 30, RANGE NINETEEN.

Lots numbered one, two, three, and four, northeast quarter, east half of northwest quarter, east half of southwest quarter, and southeast quarter of section seven, containing six hundred and thirty-two acres and fifty-eight hundredth' of an acre. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. All of section thirteen, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acres. Northeast quarter, and west half of section seventeen, containing four hundred and eighty acre'. All of section nineteen, containing six hundred and thirty-four acres and seventy-eight hundredths of an acre. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres. Northeast quarter and west half of section twenty-five, containing four hundred and eighty acres. All of section twenty-seven,
139 containing six hundred and forty acres. All of section twenty-nine, containing six hundred and forty acres. All of section thirty-one, containing six hundred and thirty-nine acres and twenty-six hundredths of and acre. All of section thirty-three, containing six hundred and forty acres. South half of section thirty-five, containing three hundred and twenty acres.

TOWNSHIP THIRTY-ONE, RANGE NINETEEN.

Lots numbered one, two, three, four, south half of northeast quarter, south half of northwest quarter, and southwest quarter, of section one, containing four hundred and eighty-two acres and twenty-two hundredth' of an acre. All of section three, containing six hundred and forty three acres and eighty-four hundredths of an acre. All of section five, containing six hundred and forty-five acres and eighty hundredths of an acre. Northeast quarter, east half of northwest quarter. Southeast quarter, and lots numbered one and two of section seven, containing four hundred and sixty acres and seventy-two hundredths of an acre. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acre'. All of section thirteen, containing six hundred and forty acre'. All of section fifteen, containing six hundred and forty acres. All of section seventeen,
140 containing six hundred and forty acres. Lots numbered one, two, three, four, half of northwest quarter, east half of southwest quarter, and southeast quarter, of section nineteen, containing four hundred and sixty-one acres and thirty-four hundredths of an acre. All of section twenty-one, containing six hundred *six hundred* and forty acres.

All of section twenty-three, containing six hundred and forty acres. North half of section twenty-five, containing three hundred and twenty acres. All of section twenty-seven, containing six hundred and forty acres. All of section twenty-nine, containing six hundred and forty acres. Lots numbered one, two, three, four, east half of northwest quarter, east half of southwest quarter, and east half of sec. thirty-on', containing six hundred and twenty-four acres and thirty-eight hundredths of an acre. Northwest quarter and east half of section thirty-three, containing four hundred and eighty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY-TWO, RANGE NINETEEN.

All of section one, containing six hundred and forty acres and twenty-four hundredths of an acre. All of section three, containing six hundred and forty-two acres and thirty hundredths of an acre. All of section five, containing six hundred and forty-one acres and twenty-four hundredth' of an acre. East half of section, lots numbered one,
141 two, three, four, east half of northwest quarter, and east half of southwest quarter of section seven, containing six hundred and twenty-five acres and thirty-two hundredth' of an acre. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. All of section thirteen, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acres. Lots numbered one, two, three, four, east half of section, east half of northwest quarter, and east half of southwest quarter of section nineteen, containing six hundred and twenty-five acres and eighteen hundredths of an acre. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres. All of section twenty-five, containing six hundred and forty acres. All of section twenty-seven, containing six hundred and forty acres. All of section twenty-nine, containing six hundred and forty acres. Lots numbered one, two, three, four, east half of northwest quarter, east half of southwest quarter, and east half of section thirty-one, containing six hundred and thirty acres and ninety-six hundredths of an acre. All of section thirty-three, containing six hundred and forty acres. All of section thirty-
142 five, containing six hundred and forty acres.

TOWNSHIP THIRTY-THREE, RANGE NINETEEN.

Lots numbered one, two, three, four, south half of northeast quarter, south half of northwest quarter, and south half of section one, containing six hundred and thirty-nine acres and sixty-four hundredths of an acre. All of section three, containing six hundred and thirty-nine acres and sixty-two hundredths of an acre. All of section five, containing six hundred and thirty-nine acres and eight hundredth' of an acre. Lots numbered one, two, three, four, east half of northwest quarter, east half of southwest quarter, and east half of section seven, containing six hundred and thirty-three acres and fifty-eight hundredths of an acre. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. All of section thirteen, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acre'. All of section seventeen, containing six hundred and forty acre'. All of section nineteen, containing six hundred and thirty-five acres and forty-four hundredths

of an acre. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and
143 forty acres. All of section twenty-five, containing six hundred and forty acres. All of section twenty-seven, containing six hundred and forty acres. All of section twenty-nine, containing six hundred and forty acres. All of section thirty-one, containing six hundred and thirty-seven acres and thirty-eight hundredth' of an acre. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY-FOUR, RANGE NINETEEN.

Lots numbered one, two, three, four, south half of northeast quarter, south half of northwest quarter, and south half of section one, containing six hundred and thirty-eight acres and ninety-eight hundredth' of an acre. All of section three, containing six hundred and thirty-eight acres and eighty-four hundredths of an acre. All of section five, containing six hundred and forty acres and ninety-four hundredths of an acre. Lots numbered one, two, three, four, east half of northwest quarter, east half of southwest quarter, and east half of section seven, containing six hundred and thirty-six acres and sixty-four hundredth' of an acre. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres.
144 All of section thirteen, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acres. All of section seventeen, containing six hundred and forty acres. All of section nineteen, containing six hundred and thirty-nine acres and eight hundredth' of an acre. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres. All of section twenty-five, containing six hundred and forty acres. All of section twenty-seven, containing six hundred and forty acres. All of section twenty-nine, containing six hundred and forty acres. All of section thirty-one, containing six hundred and forty acres and eighty-two hundredth' of an acre. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY-FIVE, RANGE NINETEEN.

Lots numbered one, two, three, four, of section one, containing one hundred and nine acres and twenty-six hundredth' of an acre. Lots numbered one, two, three, four, of section three, containing one hundred and fifteen acres and twenty-eight hundredths of an acre. Lots numbered one, two, three, four, of section five, containing one hundred and twenty-one acres and twenty-six hundredths of an acre.

145 TOWNSHIP TWENTY-EIGHT, RANGE TWENTY.

Southeast quarter of southwest quarter, and southwest quarter of southeast quarter of section nineteen, containing eighty acres. Lots numbered one and two, and north half of southeast quarter of section thirty-one, containing one hundred and fifty-six acres and twenty-nine hundredths of an acre.

TOWNSHIP TWENTY-NINE, RANGE TWENTY.

Southeast quarter of northwest quarter, and southwest quarter of

southwest quarter of section seven, containing seventy-eight acres and fifty-three hundredths of an acre. Lot number seven, and southwest quarter of southeast quarter of section nine, containing seventy-four acres and thirty hundredths of an acre. East half of northeast quarter, and south half of southwest quarter of section seventeen, containing one hundred and sixty acres. Southwest quarter of northwest quarter, and northwest quarter of southwest quarter of section twenty-one, containing eighty acres. Northeast quarter, and west half of section twenty-nine, containing four hundred and eighty acres. East half of section thirty-one, containing three hundred and twenty acres.

TOWNSHIP THIRTY, RANGE TWENTY.

Lots numbered three and four, south half of northwest quarter, and southwest quarter of section five, containing three hundred and nineteen acres and twenty-four hundredth' of an acre. All of section
146 seven, containing six hundred and thirty-nine acre'. South half of northwest quarter, and southwest quarter of section nine, containing two hundred and forty acres. Northwest quarter and east half of section seventeen, containing four hundred and eighty acres. All of section nineteen, containing six hundred and forty acres and forty-eight hundredths of an acre. West half of section twenty-one, containing three hundred and twenty acres. All of section twenty-nine, containing six hundred and forty acres. All of section thirty-one, containing six hundred and forty acres and thirty-four hundredths of an acre.

TOWNSHIP THIRTY-ONE, RANGE TWENTY.

Lots numbered two, three, four, southwest quarter of northeast quarter, and north half of southeast quarter of section five, containing two hundred and forty-one acres and two hundredths of an acre. Northeast quarter, lots numbered one and two, and east half of northwest quarter of section seven, containing three hundred and eleven acres and nine hundredths of an acre. West half of northeast quarter and west half of southeast quarter of section seventeen, containing one hundred and sixty acres. Lot number three, northeast quarter of southwest quarter, and southeast quarter of section nineteen, containing two hundred and thirty-five acres and ninety-three hundredth' of an
147 acre. North half of northeast quarter and northwest quarter of section twenty-nine contained two hundred and forty acres.

TOWNSHIP THIRTY-TWO, RANGE TWENTY.

Lots numbered one and four, southeast quarter of northeast quarter, southwest quarter of northwest quarter, and southwest quarter of section five, containing three hundred and twenty-one acres and forty-eight hundredth' of an acre. Lots numbered one, two, three, four, east half of northwest quarter, east half of southwest quarter, and southeast quarter of southeast quarter of section seven, containing three hundred and forty-six acres and two hundredth' of an acre. Northwest quarter and east half of section seventeen, containing four hundred and eighty acres. Lots numbered one, two, three, four, east half of northwest quarter, east half of southwest quarter, and southeast quarter of section nineteen, containing four hundred and sixty-nine acres and eighty-two hundredths of an acre. All of section twenty-nine, containing six hundred and forty acres. Lots numbered one, two, three, four, east half of

northwest quarter, east half of southwest quarter, and east half of section thirty-one, containing six hundred and thirty acres and sixty-six hundredths of an acre.

TOWNSHIP THIRTY-THREE, RANGE TWENTY.

All of section five, containing six hundred and thirty-eight acres
148 and seventy-two hundredths of an acre. All of section seven, containing six hundred and thirty-three acres and forty-six hundredths of an acre. West half of northwest quarter and west half of southwest quarter of section nine, containing one hundred and sixty acres. All of section seventeen, containing six hundred and forty acres. All of section nineteen, containing six hundred and thirty-four acres and thirty-two hundredths of an acre. West half of northwest quarter and west half of southwest quarter of section twenty-one, containing one hundred and sixty acres. West half of northeast quarter, west half of southeast quarter, and west half of section twenty-nine, contained four hundred and eighty acres. All of section thirty-one, containing six hundred and thirty-seven acres and sixty-two hundredths of an acre.

TOWNSHIP THIRTY-FOUR, RANGE TWENTY.

Lots numbered two, three, four, southwest quarter of northeast quarter, south half of northwest quarter, southwest quarter, and west half of southeast quarter, of section five, containing four hundred and eighty acres and sixty hundredths of an acre. All of section seven, containing six hundred and thirty-seven acres and forty-four hundredths of an acre. West half of northwest quarter, and west half of southwest quarter, of section seventeen, containing one hundred and sixty
149 acres. All of section nineteen, containing six hundred and thirty-six acres and ninety-four hundredths of an acre. Northwest quarter of northwest quarter, of section twenty-nine, containing forty acres. Lots numbered one, two, three, and four, west half of northeast quarter, east half of northwest quarter, east half of southwest quarter, and west half of southeast quarter, of section thirty-one, containing four hundred and seventy-eight hundredth' of an acre.

TOWNSHIP TWENTY-NINE, RANGE NINETEEN.

South half of section twenty-one, containing three hundred and twenty acres. North half of northwest quarter, and southeast quarter of southwest quarter, of section twenty-three, containing one hundred and twenty acres. Northeast quarter, and west half of section twenty-five, containing four hundred and eighty acres. Northwest quarter of northeast quarter, south half of southeast quarter, and west half of section twenty-seven, containing four hundred and forty acres. All of section twenty-nine, containing six hundred and forty acres. Lots numbered one, two, three, and four, east half of northwest quarter, east half of southwest quarter, and east half of section thirty-one, containing
150 six hundred and thirty acres and thirty-two hundredths of an acre. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP THIRTY, RANGE NINETEEN.

All of section one, containing six hundred and thirty-nine acre' and ten hundredth' of an acre. Lots one, two, three, and four, south half of

northeast quarter, south half of northwest quarter, and southwest quarter of section three, containing four hundred and seventy-seven acres and seventy-six hundredths of an acre. Lots numbered one, two, three, and four, south half of northeast quarter, south half of northwest quarter, and southeast quarter of section five, containing four hundred and seventy-seven acres and fifty-six hundredth' of an acre.

TOWNSHIP TWENTY-SEVEN, RANGE EIGHTEEN.

Southeast quarter of section twenty-one, containing one hundred and sixty acres.

TOWNSHIP TWENTY-SEVEN, RANGE NINETEEN.

Lots numbered three and four, south half of northwest quarter, and south half of section three, containing four hundred and eighty-three acres and eighty-six hundredth' of an acre.

TOWNSHIP THIRTY, RANGE SEVENTEEN.

Lots numbered one, southeast quarter of northeast quarter, and southeast quarter of section one, containing two hundred and forty acres and four hundredths of an acre.

151 TOWNSHIP TWENTY-EIGHT, RANGE EIGHTEEN.

South half of northeast quarter, northwest quarter of northwest quarter, southeast quarter of southwest quarter, and south quarter of section nine, containing three hundred and twenty acres. All of section fifteen, containing six hundred and forty acres.

Indemnity limits.

TOWNSHIP TWENTY-SIX, RANGE TWENTY.

Lots numbered three, four, five, and six, and south half of section twenty-five, containing five hundred and fifty-eight acres and eighty-six hundredths of an acre. Lots numbered three, four, five, six, and south half of section twenty-seven, containing five hundred and forty-nine acres and twelve hundredths of an acre. Lots numbered three, four, five, east half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of section twenty-nine, containing four hundred and forty-five acres and eighty-three hundredth' of an acre. Northeast quarter of section thirty-one, containing one hundred and sixty acres. All of section thirty-three, containing six hundred and forty acres. All of section thirty-five, containing six hundred and forty acres.

TOWNSHIP TWENTY-SEVEN, RANGE TWENTY.

All of section one, containing six hundred and forty acres and
152 forty-eight hundredth of an acre. All of section th'e', containing six hundred and forty-four acres and eighty-two hundredths of an acre. All of section five, containing six hundred and forty-six acres and forty-four hundredths of an acre. North half of northeast quarter of section seven, containing eighty acres. East half of section eleven,

containing three hundred and twenty acres. North half of section, northwest quarter of southwest quarter, east half of southeast quarter, and northwest quarter of southeast quarter, of section thirteen, containing four hundred and eighty acres. West half of northeast quarter, west half of southeast quarter, and west half of section fifteen, containing four hundred and eighty acres. West half of northwest quarter and west half of southwest quarter of section seventeen, containing one hundred and sixty acres.

TOWNSHIP TWENTY-SIX, RANGE TWENTY-ONE.

Lots numbered three, four, five, and six, and south half of section twenty-nine, containing five hundred and sixty-nine acres and seventy-eight hundredths of an acre. Lots numbered one, two, three, and four, east half of northwest quarter, east half of southwest quarter, and east half of section one, containing six hundred and twenty-one acres
153 and seventy-six hundredths of an acre. West half of northeast quarter, west half of southeast quarter, and west half of section thirty-three, containing four hundred and eighty acres.

TOWNSHIP TWENTY-SEVEN, RANGE TWENTY-ONE.

South half of northeast quarter, south half of northwest quarter, and south half of section three, containing four hundred and eighty acres. Lots numbered one, two, three, and four, south half of northwest quarter, south half of northeast quarter, and south half of section five, containing six hundred and forty-two acres and ten hundredth' of an acre. Lots numbered one, two, three, and four, east half of northwest quarter, east half of southwest quarter, and east half of section seven, containing six hundred and twenty-one acres and sixty hundredths of an acre. All of section nine, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acres. All of section seventeen, containing six hundred and forty acres.

TOWNSHIP TWENTY-SEVEN, RANGE TWENTY.

Northeast quarter and west half of section twenty-one, containing four hundred and eighty acres. Northwest quarter of northeast quarter, east half of southeast quarter, and southwest quarter of southeast
154 quarter of section twenty-three, containing one hundred and sixty acres. All of section twenty-five, containing six hundred and forty acres. West half of northeast quarter and northwest quarter of section twenty-seven, containing two hundred and forty acres. West half of northeast quarter, northeast quarter of northeast quarter, and southeast quarter of section twenty-nine, containing two hundred and eighty acres. Southwest quarter, north half of southeast quarter, and southeast quarter of southeast quarter of section thirty-three, containing two hundred and eighty acres. Northeast quarter and west half of section thirty-five, containing four hundred and eighty acres. Southeast quarter of section twenty-seven, containing one hundred and sixty acres.

TOWNSHIP TWENTY-EIGHT, RANGE TWENTY.

Lots numbered one, two, three, and four, south half of northwest quarter and south half of section one, containing six hundred and forty-two acres and two hundredths of an acre. Lots numbered one, two, three, and four, south half of northeast quarter, and south half of north-

west quarter of section three, containing three hundred and twenty-one acres and seventy-eight hundredths of an acre. Northeast quarter of southwest quarter of section nine, containing forty acres.

155 TOWNSHIP TWENTY-SEVEN, RANGE TWENTY-ONE.

Lots numbered one, two, three, and four, east half of northwest quarter, east half of southwest quarter, and east half of section nineteen, containing six hundred and twenty-three acres and ninety-six hundredth' of an acre. Northeast quarter and west half of section twenty-one, containing four hundred and eighty acres. Northwest quarter, east half of southwest quarter, and east half of section twenty-seven, containing five hundred and sixty acres. All of section twenty-nine, containing six hundred and forty acres. Lots numbered one, two, three, and four, east half of northwest quarter, east half of southwest quarter, and east half of section thirty-one, containing six hundred and twenty-five acres and eighty-two hundredths of an acre. Southeast quarter of northeast quarter of section thirty-three, containing forty acres. Lots numbered one, two, three, and four, and west half of section thirty-five, containing four hundred and forty-six acres and ninety-six hundredths of an acre.

TOWNSHIP TWENTY-EIGHT, RANGE TWENTY-ONE.

Lots numbered one, two, three, and four, south half of northeast quarter, south half of northwest quarter, and southeast quarter of section three, containing four hundred and eighty-two acres and forty-eight hundredth of an acre. Lots numbered one, two, three, and
156 four, south half of northeast quarter, south half of northwest quarter, and southwest quarter of section five, containing four hundred and seventy-nine acres and forty-two hundredth' of an acre. Lots numbered one, two, three, and four, east half of northwest quarter, east half of southwest quarter, and east half of section seven, containing six hundred and twenty-eight acres and forty-eight hundredths of and acre. Southeast quarter of section nine, containing one hundred and s'xty acres. Lots numbered five, six, seven, and eight, and northwest quarter of section eleven, containing two hundred and eighty-eight acres and thirty-eight hundredths of an acre. Northwest quarter and east half of section fifteen, containing four hundred and eighty acres. South half of northeast quarter, east half of northwest quarter, and lots numbered one and two of section nineteen, containing two hundred and thirty-five acres and seventeen hundredths of an acre. Northwest quarter and east half of section twenty-one, containing four hundred and eighty acres. Lots numbered five and six and west half of section twenty-three, containing three hundred and eighty-four acres and fifty-six hundredths of an acre. North half of section, north
157 half of southwest quarter, and west half of southeast quarter of section twenty-seven, containing four hundred and eighty acres. Lots numbered one, two, three, and four, east half of northwest quarter, east half of southwest quarter, and southeast quarter of section thirty-one, containing four hundred and seventy-one acres and thirty hundredths of an acre. Northwest quarter of section thirty-three, containing one hundred and sixty acres. Southwest quarter and lots numbered seven and eight of section thirty-five, containing two hundred and twenty-four acres & eighty-eight hundredths of acre.

TOWNSHIP TWENTY-NINE, RANGE TWENTY-ONE.

Lots numbered three and four, south half of northwest quarter, and south half of section three, containing four hundred and eighty acres and twenty-three hundredths of an acre. Northwest quarter of section nine, containing one hundred and sixty acres. Lots numbered five and six, and northwest quarter of section eleven, containing two hundred and twenty-five acres and fifty hundredths of an acre. East half of section fifteen, containing three hundred and twenty acres. East half of southeast quarter of section nineteen, containing eighty acres.

158 North half of section twenty-one, containing three hundred and twenty acre'. West half of section twenty-three, containing three hundred and twenty acres. North half of northwest quarter and south half of southeast quarter of section twenty-nine, containing one hundred and sixty acres. North half of section thirty-three, containing three hundred and twenty acres. Lots numbered five, six, seven, and eight, and west half of section thirty-five, containing four hundred and fifty-three acres and ninety-eight hundredth' of an acre.

TOWNSHIP THIRTY, RANGE TWENTY-ONE.

Lots numbered one, two, and three, south half of northeast quarter, southeast quarter of northwest quarter, and south half of section three, containing five hundred and fifty-nine acres and fifty-five hundredths of an acre. Lots numbered one, two, three, and four, south half of northeast quarter, and south half of northwest quarter of section five, containing three hundred and eighteen acres and sixteen hundredths of an acre. Northwest quarter and east half of section nine, containing four hundred and eighty acres. Lots numbered five, six, seven, and eight, and west half of section eleven, containing four hundred and fifty-four acre' and seventy-six hundredths of an acre. Northeast quarter of section fifteen, containing one hundred and sixty acres.

159 Lots numbered seven and eight of section twenty-three, containing sixty-seven acres and sixty-five hundredths of an acre. East half of southeast quarter of section twenty-seven, containing eighty acres. The said tracts, as described in the foregoing pages, from one to ten, inclusive, containing the aggregate area of ($105{,}791\frac{70}{100}$) one hundred and five thousand seven hundred and ninety-one and seventy hundredths of an acre. Now, know ye that the United States of America, in consideration of the premises and pursuant to the said act of Congress, have given and granted, and by these presents do give and grant, unto the said Missouri, Kansas and Texas Railway Company of Kansas, and its assigns, the tracts of land selected as aforesaid and described in the foregoing, yet excluding all mineral lands, should any such be found to exist in the tracts described in the foregoing; to have and to hold the said tract with the appurtenances thereof unto the said Missouri, Kansas and Texas Railway Company of Kansas, and its assigns forever.

In testimony whereof I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent, and the seal of the General Land-Offices to be hereunto affixed.

Given under my hand at the city of Washington this twenty-

160 sixth day of February, in the year of our Lord one thousand

eight hundred and seventy-two, and of the Indepen'ce of the United States the ninety-sixth.

{ U. S. G. LAND-OFFICE SEAL. }

By the President: U. S. GRANT,
By I. PARISH.

C. B. BOYNTON,
Recorder of the General Land-Office.

This indenture was filed for record on the 20th day of March, A. D. 1872, at 9 o'clock, a. m.

I. W. PATRICK,
Register of Deeds.

This instrument is recorded Book F from page 356 to 368.

STATE OF KANSAS,
County of Labette, ss:

I, I. W. Patrick, register of deeds in and for said county, do hereby certify that the foregoing is a true and correct copy of the original patent No. 2, from the U. S. Government to the M., K. & T. Railway Company, as recorded in my office.

Given under my hand and official seal at Oswego, this 17th day of February, A. D. 1874.

I. W. PATRICK,
Register of Deeds.

(Endorsed:) No. 966. In the circuit court of the United States, district of Kansas. The United States vs. Missouri, Kansas and Texas Railway Company. Bill of complaint. Filed February 25th, 1874.
161 A. S. Thomas, clerk. George R. Peck, U. S. attorney, dist. of Kansas, compt. sol.

And on this day, to wit, the twenty-fifth day of February, A. D. 1874, a writ of subpœna issued out of the said clerk's office against the said defendant in the said entitled cause, which said writ, together with acceptance of service thereon, is in the words and figures following, to wit:

Chancery subpœna.

Chancery subpœna.

UNITED STATES OF AMERICA,
District of Kansas, ss:

The United States of America to the Missouri, Kansas and Texas Railway Company, greeting:

We command you and every of you, that you appear before our judge of our circuit court of the United States of America for the district of Kansas, at the city of Topeka, in said district, on the first Monday in the month of April next, to answer the bill of complaint of The United States of America, this day filed in the clerk's office of said court, in said city of Topeka, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being filed against you by default.

To the marshall of the district of Kansas to execute.

162 Witness the Hon. Nathan Clefford, presiding justice of the Supreme Court of the United States of America, at the city of Topeka, in said district, this 25th day of February, in the year our Lord one thousand eight hundred and seventy-four.

{ UNITED STATES SEAL CIRCUIT COURT. }

A. S. THOMAS, *Clerk.*

MEMORANDUM.—The above-named defendant is notified that unless it enters its appearance in the clerk's office of said court, at the city of Topeka aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against it as confessed, and a decree entered accordingly.

A. S. THOMAS, *Clerk.*

(Endorsed:) No. 966. Circuit court United States, district of Kansas. The United States vs. Missouri, Kansas and Texas Railway Company. Chancery subpœna. Returnable to rule-day, first Monday in April, A. D. 1874. A. S. Thomas, clerk. George R. Peck, U. S. attorney, compts. sol.

Service of the within subpœna accepted this 25th day of February, 1874.

S. O. THATCHER,
Atty. for the Missouri, Kansas and Texas Railway Company.
T. C. SEARS,
Atty. for the Missouri, Kansas and Texas Railway Company.

163 Clerk U. S. circut court:

Enter my appearance in the within-entitled case.

T. C. SEARS,
Sol. M., K. & T. R. W. Co.

(Endorsed:) Filed Feb. 25, A. D. 1874. A. S. Thomas, clerk.

And on this day, to wit, February 25, 1874, came the defendant, by S. O. Thatcher and T. C. Sears, its attorneys, and enters its appearance in this said clerk's office in the said entitled suit, which said appearance is in the words and figures following, to wit:

Appearance of defendant.

Order-book, p. 126.

THE UNITED STATES
vs.
MISSOURI, KANSAS AND TEXAS RAILWAY. } 966. In equity.

Now comes the defendant herein, by T. C. Sears and Solan O. Thatcher, its attorneys, and enters its appearance in this cause and to the bill of complaint filed herein.

And on this day, to wit, April 6, 1874, came the said defendant, by S. O. Thatcher and T. C. Sears, its solicitors, and filed in the said clerk's office its answer in the said entitled suit, which said answer is in the words and figures following, to wit:

In the circuit court of the United States, district of Kansas.

164 *Answer.*

THE UNITED STATES OF AMERICA
vs.
THE MISSOURI, KANSAS AND TEXAS RAILWAY Company. } In chancery.

The answer of the Missouri, Kansas and Texas Railroad Company, defendant, to the bill of complaint of the United States of America, plaintiff.

This defendant, saving to itself now and at all times hereafter all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is necessary or material for it to make answer to, answering, saith:

That it admits that on and prior to March 3d, 1863, the Osage tribes or nations of Indians were in the possession of the premises described by metes and bounds in said plaintiff's bill, and had so been in such possession since about the year 1808; and that said possession was, by treaty of June 2d, 1825, and which treaty was proclaimed December 30th, 1825, reserved to said Indians so long as they might choose to occupy the same, and the whole title said Indians had thereto is set forth in said treaty.

And this defendant denies that said plaintiff, other than as
165 aforesaid, ever guarantied to said Indians the ownership of said land, or any part thereof, by said treaty last aforesaid; for the truth of which allegations and of all other matters connected with said treaty, and rights growing out of the same, this defendant prays leave to refer to the said treaty, now a part of the law of the land.

And this defendant, further answering, shows that said Indians remained in possession of said land until the proclamation of another treaty made by and between said Indians and the said plaintiff on the 29th day of September, 1865, and which treaty was ratified by the Senate of the United States on the 26th day of June, 1866, with the addition of certain amendments thereto, advised by said Senate, which amendments were accepted by said Indians on the 21st day of September, 1866, and the said treaty proclaimed on the 21st day of January, 1867, and thereupon became and now is the law of the land; to which treaty, the amendments thereto, the acceptance of such amendments, and the proclimation thereof, this defendant, for greater certainty, prays leave to refer, in order to show the right and interest acquired by the said plaintiff thereby in the aforesaid lands, as well as any other rights acquired, recognized, or affirmed by or to the State of Kansas or this defendant therein.

And this defendant prays this court to interpret the said treaty
166 as to the rights of the parties to this suit thereunder, and denies that the correct interpretation thereof is contained in said plaintiff's bill; and this defendant charges and insists that by virtue of said treaty, as finally proclaimed, and the acts of the plaintiff, the acts of the State of Kansas, and the consideration done and performed by this defendant in pursuance of said acts, this defendant acquired an interest in and the fee of the lands claimed by the plaintiff herein, mentioned in said treaty, as hereinafter more fully is set forth. And this defendant, further answering, denies that the Congress of the United States, on the

10th day of April, 1869, or at any other time, ever passed a joint resolution directing the sale and disposition of the lands, in the said plaintiff's bill described, in the manner in said bill stated and set forth, or in any other manner except as herein stated and set forth, or that any part of said lands remain to said plaintiff subject to any disposition or trust, except such as may remain unsold to other parties, after applying so much thereof as have been granted to the State of Kansas for the use of this defendant and of other parties as hereinafter stated. But the defendant admits that the Congress of the United States did, on the 10th day of April, 1869, pass a joint resolution which by its terms authorized citizens of the United States, and such aliens as had de-
167 clared their intention of becoming such citizens, to purchase quantities of said lands, not exceeding one hundred and sixty acres in amount for each person, for a price specified, within two years thereafter, under rules to be prescribed by the Secretary of the Interior, and that by the same resolution it was also provided that such authority to purchase should not in any manner affect any legal rights theretofore vested in any party or parties, which proviso was intended to and did except from the operation of said resolution the rights and interest of the State of Kansas, of this defendant, and of a corporation known as the Leavenworth, Lawrence and Galveston Railroad Company, in and to said lands, and was a recognition of the rights of such parties and of each of them in said lands. And this defendant, further answering, shows that, as to all that part of plaintiff's bill wherein it is alleged "That under said joint resolution of Congress, and under the regulations prescribed by the Secretary of the Interior, three hundred and fourteen thousand two hundred and twenty acres of said described land was sold to actual and bona-fide settlers thereon, and the United States through its officers of the Interior Department of the Government received therefor the sum of $454,072 $\frac{10}{100}$, this defendant is ignorant whether such attempted
168 sales were made and said money received or not, but this defendant avers that the said plaintiff did not and could not through its officers, under said resolution or otherwise, convey to any party any legal estate or interest in any of the lands claimed by this defendant as hereinafter stated, and that if any officer of the United States has under said resolution attempted to convey any interest in such lands that his acts thereupon are void. That none of the lands claimed by the plaintiff by his bill in this suit, and described in the schedule to said plaintiff's bill, have been sold by the said plaintiff to any parties, and that said pretended sale of lands mentioned and set forth in said plaintiff's bill are other lands of the said plaintiff about which no disagreement has ever arisen between this defendant and said plaintiff.

And this defendant, further answering, shows that said bill of complaint is mostly a perversion and distortion of the facts and conclusions attempted to be therein stated and set forth, and that the statement of the case in this answer contained is a correct statement of the rights and interest of the parties hereto in said lands, and the manner *and the manner* in which this defendant derived its title thereto, and that all statements and conclusions of said plaintiff's bill inconsistent herewith, this defendant expressly denies.

169 This defendant, further answering, shows that it is a duly chartered corporation, existing under the laws of the State of Kansas, and as such organized on the 25 day of September, 1865, by the name of the Union Pacific Railway Company, southern branch, which name was afterwards duly changed to the Missouri, Kansas and Texas Railway Company, by which name it is now legally known, and

holds and owns all the property, rights, privileges, and franchises, as well of the corporation under its former name, as those acquired since its change of name; that under each and both of said names, this defendant was empowered to build and operate the several railroads hereinafter mentioned, as built by this defendant; that, on the 3d day of March, 1863, the said plaintiff, by its act of Congress, approved on that day, amongst other lands then granted, granted to the State of Kansas for the purpose of aiding in the construction of a railroad down the Neosho Valley, and through a portion of the lands in said plaintiff's bill mentioned, every alternate section of land designated by odd numbers for ten sections in width, on each side of said road, to which act of Congress and the provisions thereof, now the law of the land, this defendant prays leave to refer for a determination by this court of the construction
170 and effect thereof, and what rights have come to this defendant thereunder, and by the agreement of this defendant thereunder and by the agreement of this defendant with the Atchison, Topeka and Santa Fé Railroad Company hereafter stated; and this defendant claims that, by virtue of said act and the other acts of Congress hereinafter stated, and of the treaties with the Osage Indians, all of which are public lands, there was transferred to the State of Kansas the fee-simple of all the lands in the schedule to said plaintiff's bill of complaint mentioned and described; and that none of the three hundred and fourteen thousand two hundred and twenty acres of land mentioned in said plaintiff's bill, as being sold by said plaintiff to divers parties as part or parcel of the lands described in the schedule to said plaintiff's bill; nor is there any controversy of title to the same or any part thereof, nor is any relief in respect of the same or any part thereof prayed for in said bill. And this defendant further shows that said plaintiff, by act of Congress approved on the 26th day of July, 1866, for the purpose of aiding this defendant to build and operate a railroad from or near the military reservation at Fort Riley, in the State of Kansas, down the valley of the Neosho River to the southern line of the State of Kansas, granted to the State of Kansas, for the use and benefit of this defendant,
171 every alternate section of land or parts thereof, designated by odd numbers to the extent of five alternate sections per mile, on each side of said road, and not exceeding in all ten sections per mile; and in case, when the line of said road should be definitely located, it should appear that any section or any part thereof so granted should have been sold, or that the right of pre-emption or homestead should have attached thereto, or that the same had been reserved by the United States for any purpose, then that these should be reserved and held by the Secretary of the Interior of the United States for said State of Kansas, as and for the use and benefit of this defendant, so much land as should be equal to the amount of such lands as the said plaintiff may have sold, reserved, or otherwise appropriated, and to which rights of homestead, settlement, or pre-emption should have attached; provided such lands so to be reserved as indemnity by said Secretary of the Interior should not be selected beyond twenty miles from said railroad line; to which act and to all the provisions thereof, this defendant prays leave to refer for a full statement of the rights and interests thereby secured, transferred, and acquired by the several parties therein mentioned. And this defendant further shows that, on the 9th day of February, 1864, the State of Kansas, by its act of the legislature
172 thereof, duly approved on that day, and being entitled an act to accept a grant of lands made to the State of Kansas by the Congress of the United States, to aid in the construction of certain railroads

and telegraphs, did accept of said grant of lands so made by said Congress on the 3rd day of March, 1863, upon the terms and conditions set forth in said act of Congress, and that by said enactment the said State of Kansas duly sold and granted the lands in schedule to said plaintiff's bill, particularly described, to the Atchison, Topeka and Santa Fé Railroad Company, in consideration that said company should construct a railroad from the city of Atchison via Topeka to the western line of said State of Kansas, in the direction of Fort Union and Santa Fé, New Mexico, with a branch from where said road crosses the Neosho, down said Neosho Valley to the point where the Leavenworth, Lawrence and Fort Gibson Railroad enters said Neosho Valley. And the said State of Kansas thereby further agreed that whenever said company should construct said road or branch, as required by said act of Congress, that the governor of said State of Kansas should convey, by patent, all the lands so granted which should be situated opposite to or within ten miles of the line of said road, which said act is now the public law of said State of Kansas, and to which, for a more particular statement of its conditions and provisions, this defendant prays

173 leave to refer; that within six months after the passage of said act by the legislature of the State of Kansas, the said Atchison, Topeka and Santa Fé Railroad Company accepted the provisions thereof, and filed in the office of the secretary of state for the State of Kansas a copy of such acceptance by the board of directors of such company, duly certified under the seal of said company. And this defendant, further answering, shows that on the 19th day of March, 1866, with the consent of the said State of Kansas, this defendant entered into an agreement with the said Atchison, Topeka and Santa Fée Railroad Company, by which said company sold, assigned, and transferred to this defendant all the rights, property, interest, franchises, and privileges held or claimed by them, or to be claimed or acquired by them, on account of the building of said branch road, down said Neosho Valley, and also all right, title, and interest, present and prospective, to all lands applicable from said grants to the construction of said railroad on said route; and in consideration thereof this defendant undertook to build said railroad, and to do and perform all acts and things enjoined or required by said act of Congress and of the legislature of the State of Kansas; that said agreement was, by joint resolution, duly ratified by the legislature of the State of Kansas and approved by governor thereof, February 26th, 1867, to which resolution, for greater certainty, this defendant prays leave to refer.

174 And this defendant, further answering, shows that, within one year from the passage of said act by the Congress of the United States, on the 26th day of July, 1866, as hereinbefore stated, this defendant signified in writing its acceptance of the terms, conditions, and impositions of said act, under its corporate seal, duly executed, pursuant to the direction of this defendant's board of directors first had and obtained, and depositedthe same with the Secretary of the Interior; that its line of definite location was made, surveyed, and completed, and a map designating the route thereof was filed with the Secretary of the Interior, after the 21st day of January, 1867; and afterwards and on the 2d day of January, 1868, said Secetary of the Interior withdrew the lands mentioned in the schedule to said plaintiff's bill from the marked, as provided in said act, and notified the register and receiver of the district in which said lands are situated of his action thereon, and the same was duly entered and withdrawn upon the plats of land in their office; that said withdrawal was made on or about the 2d day of Janu-

ary, 1868, and included all the odd-numbered sections of said lands within ten miles of said railroad within the limits of the tract or parcel of lands described by metes and bounds in said plaintiff's bill, and all the lands beyond the limit of the ten miles each side of said road and within the limit of twenty miles on each side of thereof; that
175 outside of said tract, a large quantity of the public lands had, prior to that time, been granted and disposed of by said plaintiff or had been settled upon and claimed by pre-emption and homestead settlement, and there were no sufficient lands in quantity or value to compensate this defendant for the burthens imposed upon it by said act of Congress granting said lands; that the building of said railroad was a great public benefit, and largely increased the value of the remaining lands of said plaintiff, and was of great advantage otherwise to said plaintiff, in affording rapid and easy transit for mails, troops, munitions of war, and for other purposes, and that the whole of said lands claimed by said plaintiff by his said bill are an inadequate compensation for the obligations incurred by this defendant to said plaintiff; that this defendant has already built and completed the said railroad as required by said act of Congress, and has fully complied with its agreement with the Atchison, Topeka and Santa Fé Railroad Company, and has built and equipped and has now in operation the whole line of its road specified in said acts of Congress and of the legislature of the State of Kansaf, to wit, from a point at or near Fort Riley, down the valley of the Neosho River to the southern line of the State of Kansas, and from thence in the direction indicated in said act of Congress through the Indian Territory, to the State of Texas;

176 That, on or about the 9th day of June, 1870, the governor of the State of Kansas duly certified to the Secretary of the Interior that said road had been so completed and equipped, as required by the acts of Congress and of the legislature aforesaid; that, prior to said certificate, this defendant had caused to be filed with the governor of the State of Kansas a map of the location of said road within the State of Kansas, duly certified by the chief engineer of this defendant, and duly certified to be correct by its executive officers, and also filed with the Commissioners of the General Land-Office of the United States a map of such location and survey, duly verified and certified as aforesaid. And this defendant admits that it received from the Secretary of the Interior the patents for said lands in said plaintiff's bill mentioned and contained, with exhibits to said bill, marked A, B, C, and D, but it denies that said patents were issued without authority of law or contrary to equity, or to the injury of the said plaintiff, but, on the contrary thereof, it alleges that such patents were issued in conformity with the law, and that under the same this defendant is vested with a good and perfect title to the lands therein described; that since the issuance thereof the State of Kansas has levied large taxes for State, municipal, and educational purposes, which have been paid by this defendant. And this defendant, further answering, shows that the said plaintiff has had and used, since the completion of said road, all the rights and
177 privileges stipulated for in the said statutes, and this defendant is ready and willing, at all times, to do, perform, and keep, on its part, all the terms and conditions imposed upon it by the said acts of Congress. And this defendant, further answering, shows that the said patents were duly recorded in the office of the register of deeds of the several counties in the State of Kansas in which said lands were situated, respectively, and from the time of such recording were notice to all persons of the title of this defendant to the lands therein described; that this

defendant, being largely indebted for money advanced for the building and equipment of said road, in order to raise money to pay such indebtedness, duly mortgaged to the Union Trust Company of the City of New York, the whole of said lands, to secure the bonds of this defendant thereupon also issued, to the amount of about the sum of fourteen millions ($14,000,000) dollars; that said mortgage-bonds were thereupon by the said Union Trust Company put upon the market and sold to various parties for cash, who purchased the same largely upon the faith of the title to said lands so conveyed to this defendant, as aforesaid. And this defendant, further answering, shows that said plaintiff has, at various times, by various laws and public acts and resolutions, recognized the title and interest of this defendant in and to the said
178 lands, whereby it has induced this defendant to expend money in the building, equip'ing, and operating said railroad, and that it would be contrary to equity and good conscience, and a fraud upon this defendant and the bondholders aforesaid to deny such right and retain the same contrary to such recognition and the acts of Congress and the treaties aforesaid. And this defendant submits to this honorable court that none of the matters in said plaintiff's bill mentioned and complained of are matters in respect to which the plaintiff is entitled to relief in a court of equity; and this defendant asks to have the same benefit of defense thereto as if it had demurred to said plaintiff's bill.

And this defendant denies all and all manner of unlawful combinations and confederacy, wherewith it is charge' in and by said bill, and it denies each and every allegation of the said bill not hereinbefore admitted or expressly denied.

And which matters this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and it humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

S. O. THATCHER,
T. C. SEARS,
Deft's Solicitors.

Of Counsel.

(Endorsed:) No. 966. U. S. circuit court, district of Kansas. The United States of America vs. The Missouri, Kansas and Texas
179 Railway Company. Answer. Filed April 6, 1874. A. S. Thomas, clerk.

Attached to the foregoing answer of defendant is the following stipulation, to wit:

U. S. circuit court, district of Kansas.

THE UNITED STATES OF AMERICA
vs.
THE MISSOURI, KANSAS AND TEXAS RAILWAY Company. } In chancery.

Waiver of answer under oath or official seal is hereby stipulated in this case, and defendant's answer shall be sufficient, if signed by its solicitor.

GEO. R. PECK,
Compt's Sol.

And on this day, to wit, April 10, A. D. 1874, came the complainant, by Geo. R. Peck, its solicitor, and filed in the said clerk's office its replication in the said entitled suit; which said replication, with the endorsements thereon, is in the words and figures following, to wit:

Replication.

Circuit court of the United States, district of Kansas, eighth circuit.

THE UNITED STATES OF AMERICA
vs.
THE MISSOURI, KANSAS AND TEXAS RAILWAY Company.

The replication of the United States of America, complainant, to the answer of the Missouri, Kansas and Texas Railway Company, defendant.

This repliant, saving and reserving unto itself, now and at all
180 times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, says that it will ever, maintain, and prove its said bill of complaint to be true, certain, and sufficient in law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, *or denied*, is true. All of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct; and hereby prays, as in and by its said bill it has already prayed.

GEO. R. PECK,
United States Attorney, Dist. of Kansas,
Complainant's Solicitor.

(Endorsed:) 966. Circuit court, district of Kansas. The United States vs. The Missouri, Kansas and Texas Railway Company. Replication. Filed April 10, 1874. A. S. Thomas, clerk.

And on this day, to wit, June 8th, A. D. 1874, came the defendant, by its solicitor, and filed in the said clerk's office the deposition of John W. Scott, which deposition, with the endorsements, etc., thereon, is in the words and figures following, to wit:

181 *Deposition of Scott.*

THE UNITED STATES OF AMERICA
vs.
THE LEAVENWORTH, LAWRENCE AND GALveston Railway Company.

JOHN W. SCOTT, being duly sworn, deposes that he is land commissioner of the Leavenworth, Lawrence and Galveston Railroad Company, and has been so since June, 1871; that he knows all the lands said company has received or obtained from the United States under the act of Congress approved March 3d, 1863; that it has re-

ceived in the county of Douglas no lands; in the county of Franklin, two thousand seven hundred and eighty-three and thirty-five hundre'ths ($2,783_{100}^{35}$) acres; in the county of Anderson, thirty thousand seven hundred and seventy-six and sixty-seven hundre'ths ($30,776_{100}^{67}$) acres; and in the county of Allen, forty-two thousand five hundred and thirty-two and fifty-six hundre'ths ($42,532_{100}^{56}$) acres, making a total of seventy-six thousand and ninety-two and fifty-eight hundre'ths ($76,092_{100}^{58}$) acres; that in addition to the above-mentioned lands, the said railroad company has received on an exchange with the Missouri, Kansas and Texas Railway Company, north of the Osage ceded tract, twenty-six thousand one hundred and seventy-six and fifteen hundre'ths ($26,176_{100}^{15}$) acres; and that these are all the lands received as aforesaid by the said company, north of the Osage ceded lands.

182 That it received one hundred and twenty-three thousand two hundred and eighteen and fourteen hundre'ths ($123,218_{100}^{14}$) acres from the State of Kansas, of what is known as internal-improvement lands.

JNO. W. SCOTT.

Sworn before me this 1st day of June, A. D. 1874.

[SEAL] FRANCIS S. EARLE,
Notary Public.

(Endorsed:) No. 965. The United States of America vs. The Leavenworth, Lawrence and Galveston Railroad Company. Deposition of J. W. Scott. Filed June 8th, 1874. A. S. Thomas, clerk.

This may be read as a deposition in the within case.
June 1st, 1874.

WILSON SHANNON,
Atty. for Plft.

And on this day, to wit, June 8th, A. D. 1874, came the defendant, by its solicitor, and filed in the said clerk's office an indenture made between the Atchison, Topeka and Santa Fé R. R. Co., party of the first part, and the Union Pacific R W. Co., S. B., party of the second part, which indenture, with endorsement thereon, is in words and figures following, to wit:

Indenture between A. T. & S. F. R. R. and U. P. R. W., S. B.

This indenture, made this 19th day of March, A. D. 1866, by and between the Atchison, Topeka and Santa Fé Railroad Company, party of the first part, and the Union Pacific Railroad Company, southern branch, party of the second part, both corporations created and organized under and by virtue of the laws of the State of Kansas, witnesseth:

183 That whereas, by the act of Congress entitled "An act for a grant of lands to the State of Kansas, in alternate sections, to aid in the construction of certain railroads and telegraphs in said State," approved March 3, 1863, lands were granted to said State in aid of construction (among other roads and branches) of a railroad from where the line of road of the party of the first part crosses the Neosho River, down said river to where the Leavenworth, Lawrence and Fort Gibson Railroad enters said valley; and

Whereas, by the act of Congress entitled "An act making an additional grant of lands to the State of Kansas to aid in the construction

of a railroad and telegraph line from Emporia, via Council Grove, to a point near Fort Riley, on the Branch Union Pacific Railroad in said State;" and

Whereas the legislature of the State of Kansas, by its act entitled "An act to accept a grant of land made to the State of Kansas by the Congress of the United States to aid in the construction of certain railroads and telegraphs in said State, and to apply the same to the construction of said railroads and telegraphs," approved February 9th, 1864, did accept the grant of lands so made by Congress; and

Whereas the legislature of said State, by said act, did agree to grant, bargain, and sell to the party of the first part hereunto, in consideration (among other things) that said party of the first part should construct a railroad from a point on the Missouri Pacific Railroad,
184 eastern division, at or near Fort Riley, down the Neosho River to a point where the Leavenworth, Lawrence and Fort Gibson Railroad enters the said Neosho Valley; said road to be constructed as in said act of the legislature and the above-recited acts of Congress especially provided; did agree, on the completion of sections of said road, as therein agreed, to convey, by patent, to the party of the first part hereunto, all the lands granted as aforesaid by Congress, *odd* applicable to the construction of the road last above mentioned; and

Whereas the party of the first part did, within six months after the passage of the above-recited act of the legislature of the State of Kansas, file their acceptance of the provisions of the above-recited act, and did thereby covenant and agree with the State of Kansas (among other things) that they would construct the road herein indicated, and do and perform all and singular the conditions and requirements in acts of said legislature and of Congress contained; and

Whereas the party of the second part has since that time become a body corporate and politic, created and organized for the purpose of constructing a railroad from a point on the Union Pacific Railroad, eastern division, at or near Fort Riley, to the southern boundary of the State of Kansas, by way of the Neosho Valley, and on the route of the road contemplated in said acts of Congress, and said legislature; and

185 Whereas the legislatnre of the State of Kansas has made to the party of the second part a large appropriation to aid in the construction of the line of road last above mentioned; and

Whereas the great length of the main line of road of the party of the first part must delay the speedy construction of the road in the valley of the Neosho River; and

Whereas the public good requires that there should be no conflict of rights in the construction of the road in said valley:

Therefore, for and in consideration of one dollar, to them in hand paid, the receipt whereof is hereby acknowledged, and in further consideration of the premises, covenants, undertakings, and agreements of the party of the second part hereinafter contained and set forth, to be by said party kept, performed, and observed, the party of the first part hath bargained, sold, and assigned, and by these presents doth bargain, sell, assign, and transfer, and sell and deliver over to the party of the second part, their representatives and assigns, all the rights, title, and interest, franchises, authority, privileges, immunities, and liberties held, acquired, possessed, and enjoyed, for constructing, maintaining, operating, and enjoying a railroad from the Union Pacific Railroad, eastern division, from a point at or near Fort Riley down the Neosho Valley to where the Leavenworth, Lawrence and Fort Gibson Railroad

186 may enter the Neosho Valley, which rights, title, interest, franchises, authority, immunities, and privileges accrued to and become vested in the party of the first part by virtue of its acceptance of the provisions of the act of the legislature of the State of Kansas above recited, and its promise, covenant, undertaking, and agreement to do and perform all and singular the requirements and conditions of said act of said legislature and the acts of Congress hereinbefore recited and referred to; and, on compliance by the party of the second part with the terms, requirements, and *and* conditions of the above-recited acts, the party of the first part authorizes and empowers the party of the second part to receive, hold, and enjoy any lands, property, or effects applicable to the construction of a railroad between the points aforesaid, as fully and completely as the party of the first part might have held and enjoyed such lands, property, and effects had this assignment or transfer never been made.

In consideration of the premises, and the further consideration of one dollar to them in hand paid, the receipt of which is hereby acknowledged, the party of the second part, their representatives and assigns, covenant and promise with and to the party of the first part, their successors, legal representatives, and assigns that they will well and faith-
187 fully do and perform all and singular the duties, obligations, and requirements imposed upon said party of the first part and assumed and undertaken by said party under the several acts of Congress and of the legislature of the State of Kansas, heretofore cited and hereby referred to as more fully setting forth the obligations and liabilities hereby assumed, and that they will construct, maintain, and operate a railroad and telegraph from a point on the Union Pacific Railroad, eastern division, at or near Fort Riley, down the Neosho River Valley to where the Leavenworth, Lawrence and Fort Gibson Railroad may enter said valley, within the time required and on the conditions prescribed in said acts.

And the party of the second part further agrees, covenants, and promises the said party of the first part that they will protect and hold free from harm, or loss in property or estate, the party of the first part against all forfeitures or penalties accrued or adjudged against said last-named party, in consequence of any default or failure made or permitted after the date hereof in the construction, maintenance, or operation of said road and telegraph embraced in the agreement.

And the said party of the second part further agree that they will repay any and all moneys necessarily expended up to the date of
188 these presents for engineer's surveys, plats, and profiles by the party of the first part upon the above named line of railroad, on the delivery to them of said engineer's plats, maps, and profiles upon which such expenditures were made.

In testimony whereof the parties hereto have subscribed their names and affixed their seals by order of their respective boards of directors.

On behalf of the Atchison, Topeka and Santa Fé Railroad Companies:

ATCHISON, TOPEKA AND SANTA FÉ R. R. CO. SEAL.

SAMUEL C. POMEROY, [L. S.]
President.

WILLIS GAYLORD, [L. S.]
Secretary.

On behalf of the Union Pacific Railroad, southern branch—

R. McBRATNEY, [L. S.]
N. S. GOSS, [L. S.]
Agents and Attorneys.

(Endorsed:) M. K. & T. Filed June 8th, 1874. A. S. Thomas, clerk.

And on this day, to wit, June 8th, 1874, came the defendant by its solicitor, and filed in the said clerk's office, in the above-entitled cause, a deed of trust from the Union Pacific Railway Company, southern branch, to Russell, and N. A. Cowdrey; which deed of trust is in the words and figures following, to wit:

APPENDIX R.

Mortgage from U. P. R. W. Co. to Russell Sage et al.

Mortgage or deed of trust from the Union Pacific Railway Com-
189 pany, southern branch, to Russell Sage and N. A. Cowdrey.

Synopsis of the instrument.

In trust to secure the payment of $4,250,000, it being a first mortgage of $16,000 per mile on 170 miles of railroad extending from Junction City, Davis County, Kansas, to the Kansas State line, and a first mortgage on about 1,300,000 acres of land donated by Congress to aid in building said railroad. The proceeds of the sales of lands are set apart to redeem or pay said bonds at the market-price, not exceeding 120 per centum. In the event of the makers extending their railroad from the Kansas State line southerly to Fort Gibson, about 90 miles, and acquiring the lands donated by Congress to aid in the construction thereof, then they may increase said mortgage debt $2,250,000 more, $16,000 per mile on the said road, and the whole amount upon the lands donated for that extension, and if it extends the same, as above, from Fort Gibson to Fort Smith, about 65 miles, then they have liberty to increase said mortgage-debt, the same as above, $1,600,000; and if extended, the same as above, from Fort Gibson to the Red River, about 160 miles, they have liberty to increase said mortgage debt, the same as above, $4,000,000.

Principal and interest payable in gold; interest at 6 per cent. per annum, 1st of January and July. Bonds received at par in payment for lands.

190 This indenture, made at Junction City, Davis County, State of

Parties.

Kansas, on the 14th day of November, A. D. 1868, between the Union Pacific Railway Company, southern branch, a corporation duly and legally incorporated by and under the laws of the State of Kansas, parties of the first part, and Russell Sage and N. A. Cowdrey, both citizens of the city and county of New York, parties of the second part.

Preamble.

Witnesseth, that whereas the said railway company are desirous of building, equipping, and operating a railroad from Junction City, Davis County, Kansas, southerly, via Council Grove, Emporia, Burlington, and Neosho Falls, to the State line.

And whereas, in aid thereof, the Congress of the United States have granted to the State of Kansas ten sections of lands, 640 acres each for each mile of railroad built, as more fully appears by reference to the act of Congress relating thereto.

And whereas the State of Kansas has accepted said grant from Congress, and regranted the same to the party of the first for the purpose of aiding in the construction of said railroad;

And whereas, to carry into effect the desire of said railroad company to build, equip, and operate said railroad, it is necessary for them to borrow the sum of $4,250,000, and for that purpose, and in evidence

thereof, to make and issue bonds in sums of $1,000 each, in manner and form as hereinbefore set forth, and to secure the payment thereof to mortgage their entire property, real and personal, and also all
191 their franchises applicable to the railroad between the points above named, to which end the said railway company have consented to make, issue, and negotiate the sum of four millions two hundred and fifty thousand dollars, evidenced by bonds as herein below set forth; which bonds now to be issued hereunder are numberred 1 to 4,250, all of which are duly and legally made and delivered by said Union Pacific Railroad Company, southern branch, and are in the form following, to wit:

UNITED STATES OF AMERICA,
State of Kansas:

UNION PACIFIC RAILWAY COMPANY, SOUTHERN BRANCH.
No.

Know all men by these presents that the Union Pacific Railway Company, southern branch, are indebted to Russell Sage and N. A. Cowdrey, or bearer, in the sum of one thousand dollars, which they promise to pay to the bearer thereof, in gold coin of the United States of America, on the first day of January, A. D. 1899, at their office or agency in the city of New York, with interest thereon from the first day of January, A. D. 1869, at the rate of six per centum per annum, payable semi-annually in said gold coin at their office or agency in the city of New York, on the first day of January and July in each year, on the presentation and surrender of the annexed coupons as they severally become due;
192 and in case of the non-payment of interest for six months, then, without demand or notice, the principal of this bond shall become due and payable, in the manner and with the effect provided in the deed of trust given to secure the payment of this bond. The makers of this bond reserve the right to themselves and to their successors to redeem or pay this bond at their option upon giving the notice provided in the deed of trust, at one hundred and twenty per centum and the accrued interest thereon.

The holder of this bond is entitled, at any time within ten days after any dividend shall be declared and become payable upon the capital stock, to convert the principal thereof into the stock of said railroad company at par, receiving stock therefor, dollar for dollar, upon the surrender of this bond with the unpaid coupons attached.

This bond is one of a series amounting to $4,250,000, but in the event of said railway company extending their railroad from the Kansas State line to Fort Gibson, and acquiring the lands donated to aid in the construction thereof, then this issue of bonds may be increased $2,250,000, and if extended the same as above from Fort Gibson to Fort Smith, then this issue of bonds may be increased $1,600,000; and if extended from Fort Gibson to the Red River, the same as above, then this issue of bonds may be increased $4,000,000. All of which bonds are or
193 are to be executed and delivered in conformity with the laws of the State of Kansas, and the vote and resolution of the board of directors of said railway company, the makers thereof. The bearer hereof is entitled to all the security derived from a mortgage or
Form of bond. deed of trust of even date herewith, executed and delivered to Russell Sage and N. A. Cowdrey, trustees, conveying the line of railroad and its equipment from Junction City, Davis County, Kansas, southerly to the State line, about 170 miles, and also about 1,300,000

acres of land granted by Congress to aid in building said railroad. The proceeds of the sales of said lands are to be a sinking-fund for the payment of the principal and interest of said bonds.

This bond shall not be valid or obligatory until it shall have been authenticated by a certificate endorsed hereon, duly signed by both trustees, or their or his successor or successors, and is issued, received, and held subject to the terms and conditions contained in said mortgage or trust-deed.

In witness whereof the said Union Pacific Railway Company, Southern Branch, have caused their corporate name and seal to be hereto affixed by their president and secretary on the 14th day of November, A. D. 1868.

Union Pacific Railway Company, Southern Branch, by

, *President.*

, *Secretary.*

194 (Endorsed:) "No. 966." "The United States vs. The Missouri, Kansas and Texas Railway Co." Filed June 8, 1874. A. S. Thomas, clerk.

Resolution.

And on this day, to wit, June 8, 1874, came the defendant by its solicitor and filed in the above-entitled suit, in the said clerk's office, a certified copy of a resolution of the board of directors of the Union Pacific Railway, Southern Branch, accepting the terms, &c., of a bill granting lands to the State of Kansas to aid in the construction of a southern branch of the Union Pacific Railway and Telegraph from Fort Riley, Kansas, to Fort Smith, Ark., etc., addressed to the Secretary of the Interior, together with the receipt thereof by the said Secretary; which said copy of said resolutions and receipt is in the words and figures following, to wit:

EMPORIA, KANSAS, *Dec.* 6, 1866.

SECRETARY INTERIOR,
Washington, D. C.

SIR: This is to certify that at a legally convened meeting of the directors of the Union Pacific Railway, Southern Branch, Company, the same being a corporation legally chartered under the laws of the State of Kansas, at Emporia, Lyon County, Kansas, on the 8th day of August, A. D. 1866, the following resolutions were adopted:

Resolved, That the terms, conditions, and impositions of a bill granting lands to the State of Kansas, to aid in the construction of a southern branch of the Union Pacific Railway and Telegraph-line from
195 Fort Riley, Kansas, to Fort Smith, Arkansas, passed by Congress the 24th day of July, A. D. 1866, be, and the same are hereby, accepted by the said Union Pacific Railway, Southern Branch, Company; and

Resolved, That a copy of this resolution, properly authenticated, be forwarded to the Secretary of the Interior.

Given under our hands and the corporate seal of the Union Pacific Railway, Southern Branch, Company, at Emporia, Lyon County, Kansas, this 6th day of December, 1866.

[SEAL]

A. S. GOSS,
Pres. U. P. R. S. B. Co.

P. B. MAXON,
Sec. U. P. R. S. B. Co.

That a receipt of said communication to the Secretary of the Interior was acknowledge' as follows:

DEPT. OF THE INTERIOR,
Washington, D. C., June 4th, 1867.

SIR: I have to acknowledge the receipt, on the 26th ultimo, of a certified copy of resolutions of the directors of the Union Pacific Railway, Southern Branch, Company, accepting the terms, conditions, and impositions of a bill granting lands to the State of Kansas to aid in the construction of a southern branch of the Union Pacific Railway and Telegraph from Fort Riley, Kansas, to Fort Smith, Arkansas, passed by Congress the 24th day of July, A. D. 1866, and approved by the
198 President the 26th day of July, 1866.

I am sir, very respectfully, your ob't servant,
O. H. BROWNING.

Hon. P. B. MAXON,
Emporia, Kansas.

(Endorsed:) M. K. T. Filed June 8, 1874. A. S. Thomas, clerk.

196 *Stipulation.*

UNITED STATES OF AMERICA:

In circuit court for the district of Kansas.

THE UNITED STATES
vs.
THE L. L. & G. RAILROAD.

SAME PLAINTIFF
vs.
M. K. & T. RAILROAD CO.

1st. It is mutually agreed that the following evidence may be introduced in each of the above cases:

1st. The annexed maps, marked 1, 2, 3, 4, 5; also, three series of letters, marked A, B, C, D, E, F.

2. It is further agreed that the register of the land-office at Humboldt, in the State of Kansas, received the letter of the Commissioner of the General Land-Office of the date of 21st of January, A. D. 1868, on the 4th day of February, 1868; said letter is found in series marked "A."

3. It is further agreed that certified lists of the lands patented to the L. L. & G. Railroad by the State of Kansas were issued by the Interior Department and received by the governor of the State of Kansas before the said patents were issued to said road for the said lands in the bill described.

4. It is further agreed that under the joint resolution of 10th of April, 1869, lands had been entered at the local land-office, and that said entries had been cancelled and set aside by the Secretary of the Interior at the instance of said railroad companies claiming said land as part of their grants; but that no patents have issued as yet to either of said railroad companies for any of said land entered under said joint resolution.

197 5. It is agreed that the town of Thayer, mentioned in the actions, is situated on sections No. 29 & 30, town. 29, range 18, in Neosho County, State of Kansas.

6. That said railroad companies have paid taxes on said lands in their answers mentioned for State, county, and municipal purposes from the time of the completion of their said roads up to the year 1873.

7. It is agreed that the mortgagees in the answers mentioned may enter an appearance in each of these cases and file their answers therein, but that said appearances and answers shall in no way work a continuance of said cases.

8. It is further agreed that if either party desires any evidence which he deems material, he shall not be precluded from introducing further evidence by the foregoing agreement.

9. It is admitted that the M. K. & T. Railroad has succeeded to all the rights of the Atchison, Topeka and Santa Fé Railroad for building a road from at or near Fort Riley down the Neosho Valley to where the L. L. & G. Railroad enters the Neosho Valley, and that the said M. K. & T. Railroad has built said road from Fort Riley to said point where the L. L. & G. Railroad enters said valley.

GEO. R. PECK,
U. S. Atty. Dist. of Kansas, Compl't's Sol.
S. O. THACHER,
For Deft.
T. C. SEARS,
For M. K. & T.

WILSON SHANNON,
Of Counsel.

198 *Case taken under advisement.*

And on this day, to wit, June 9th, 1874, in the June term, A. D. 1874, of said court, in the record of the proceedings thereof in the said entitled suit is the following entry, to wit:

THE UNITED STATES
vs.
THE MISSOURI, KANSAS AND TEXAS RAILWAY Company.

Now comes the said complainant herein by George R. Peck and McComas and McKeighan and Wilson Shannon, its solicitors, and the said defendant by T. C. Sears and S. O. Thatcher, its solicitors, and thereupon this cause came on to be heard on the proofs, records, and pleadings filed herein, and was argued by counsel and taken under advisement by the court.

And on this day, to wit, August 25th, A. D. 1874, there was filed in the clerk's office of said court, in the said entitled suit, the following decree, in words and figures, to wit:

Circuit court of the United States, district of Kansas.

THE UNITED STATES OF AMERICA
against
199 THE MISSOURI, KANSAS AND TEXAS Railway Company. } In equity.

Final decree.

This cause came on to be heard at the June term, 1874, before the Hon. Samuel F. Miller and the Hon. John F. Dillon, judges of said

court, upon the bill, answer, replication, exhibits, and proofs, and was argued by Geo. R. Peck, district attorney, Wilson Shannon, McComas and McKieghan, solicitors for complainant, and S. O. Thatcher and T. C. Sears, solicitors for defendant, and the court being now, August 25th, 1874, fully advised in the premises, doth find the equity of the cause to be with the complainant, and doth now order, adjudge, and decree that the legal title to the lands described in the bill of complaint, and claimed by the said defendant, and included within the limits of the said tract of land above described in the first article of said treaty proclaimed January 21st, 1867, between the Osage tribe of Indians and the United States, is vested in and of right belongs to the United States in trust for the uses and purposes specified in said first article of said treaty; and it is further ordered, adjudged, and decreed that the said patents to the said defendant for a portion of said lands described in the first article of said treaty, and marked Exhibit A, B, C, & D,
200 respectively, be decreed to be null and void, and without authority of law, and that they constitute a cloud upon the said legal title of complainant, and the same be removed, and that the said defendant be perpetually enjoined from setting up any claim, either in law or in equity, in or to any of said lands situate, lying, and being within the boundarys of said Osage ceded lands described as aforesaid in said first article of said treaty with the said Osage tribe of Indians under and by virtue of said patents, or either of them, the said patents thus described to be null and void and for naught held, and are dated and recorded as follows, to wit: Patent from the United States to the Missouri, Kansas and Texas Railway Company, February 19th, 1872, recorded in the office of the register of deeds of Neosho County, Kansas, March 15, 1872; recorded also in the office of register of deeds, Montgomery County, Kansas, June 10, 1872; recorded also in the office of the register of deeds of Labette County, Kansas, March 4, 1872. Patent from the United States of America to the Missouri, Kansas and Texas Railway Company, February 25th, 1872, recorded in the office of the register of deeds, Neosho County, Kansas, September 12, 1872, recorded also in the office of the register of deeds in Labette County, Kansas, March 26th, 1872.

201 It is further ordered that the defendant pay the costs of this suit, taxed at $ *dollars;* and that execution issue therefor.

From this decree the defendant prayed an appeal, which was allowed and the bond in appeal fixed at $1,000.

And it is further ordered by the court, at the request of the solicitors of the complainant and defendant, that the clerk of this court send up to the Supreme Court of the United States all the maps, plats, and documentary evidence used on the trial of this cause.

(Endorsed:) 966. The United States vs. The Missouri, Kansas and Texas Railway Company. Decree. Filed August 25th, 1874. A. S. Thomas, clerk. S. O. Thatcher.

And on this day, to wit, September 11, 1874, came the defendant, by its solicitors, and filed in the clerk's office of said court an appeal-bond in the above-entitled cause; which appeal-bond, with the endorsements thereon, is in the words and figures following, to wit:

Bond for appeal.

Circuit court of the United States, district of Kansas.

THE UNITED STATES OF AMERICA
vs.
THE MISSOURI, KANSAS AND TEXAS RAILWAY Company. } In equity.

Know all men by these presents that we, the Missouri, Kansas
202 and Texas Railway Company, *and* are held and firmly bound unto the United States of America in the sum of one thousand dollars, to be paid to the said United States of America; to which payment well and truly to be made we bind ourselves and each of us, our heirs, executors, administrators, firmly by thes' presents, sealed with our seals this 7th day of September, A. D. 1874.

Whereas the above-named Missouri, Kansas and Texas Railway Company 'as taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit of the United States for the district of Kansas:

Now, therefore, the condition of this obligation is such that the above-named The Missouri, Kansas and Texas Railway Company shall prosecute its said appeal to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY,
By A. J. ALLEN,
Genl. Agent Law Dept. M. K. & T. Ry. Co.
JAMES M. SPOONER.

ATCHISON, *September* 9, 1874.

203 The above bond is approved this 9th of September, 1874.
C. G. FOSTER, *Judge.*

(Endorsed:) No. 966. U. S. vs. Missouri, Kansas and Texas Railway Co. Appeal-bond. Filed Sept. 11th, 1814. A. S. Thomas, clerk.

204 *Judge Miller's opinion.*

THE UNITED STATES
vs.
THE LEAVENWORTH, LAWRENCE AND GALVESTON Railroad Company. }

United States circuit court, district of Kansas, June term, 1874. Before Miller and Dillon, JJ.

Mr. Justice MILLER:

This case, with that of the same plaintiffs against the Missouri, Kansas and Texas Railroad Company, is submitted to the court on the bills, answers, replications, documentary evidence, and agreed statements of facts. The facts are undisputed and without complication. The questions to be considered are exclusively questions of law.

The bill is filed by the United States, under the direction of the Attorney-General, to set aside and annul certain patents for lands issued to the defendant by the Secretary of the Interior, on the ground that they

were issued without authority of law. The case of the United States v. Stone (2 Wallace, 525) is conclusive, so far as any authority is necessary, of the right to the relief sought, if this statement be true.

The defendant, a corporation which has built a road through the lands in controversy, and received of the United States the patents which are assailed in the bill, asserts the validity of these patents under an act of Congress of March 3, 1863, and the treaty with the Osage tribe of Indians, proclaimed Jan. 21, 1867.

In addition to the very able oral arguments on both sides at the bar, and the printed arguments of counsel engaged in the present case, there have been filed copies of printed arguments before the Secretary of the Interior, which show that his action in issuing the patents was not hasty or wanting in reflection, but was the result of deliberate judgment,
205 after hearing counsel. This circumstance is not without embarassment in the minds of the court now called on to consider the same question. But the constitutional advisor of the Government, the Attorney-General of the United States, has felt it to be his duty to ask for a cancellation of these patents, and, as the only question raised is upon the proper construction of the act of Congress and the treaty aforementioned, it is eminently a judicial one, which the court cannot avoid or decline to decide, how high soever may be its respect for the decision of the Department of the Interior.

The act of Congress referred to, found in 12 Statutes at Large, p. 772, by its first section grants to the State of Kansas, for the purpose of aiding in the construction of certain railroads and branches, every alternate section of land designated by odd numbers, for ten sections in width, on each side of said road and each of its branches.

The road, so far as the matter now in issue is concerned, is described in the act as one from the city of Leavenworth, by way of the town of Lawrence and the Ohio City crossing of the Osage River, to the southern line of the State, in the direction of Galveston Bay in Texas. This description would carry the road through a large body of land, then in the peaceful possession and occupancy of the tribe of Osage Indians, lying within the border of the State of Kansas. By a treaty between the United States and this tribe, made September 29, 1865, before the line of said railroad was located, the tribe ceded to the United States a large body of lands, embracing those in controversy

206 The first question, therefore, which presents itself for solution is whether the grant of lands, as made by Congress in 1863, includes the lands then held by the Osage Indians by the ordinary tenure by which Indian tribes hold lands in the United States, but afterwards ceded by treaty to the Government. I say by the ordinary tenure by which Indians hold lands, because I do not find anything in the language of the treaty of 1825 with that tribe which changes the nature of their title.

Counsel for defendants have supposed that, in considering the effect of the grant under the act of 1863 upon these lands, a material consideration favorable to their claims is that the grant is to be construed with reference to the condition of the title of these lands when the line of the road was located and adopted by the company. This argument is based upon what must be conceded to be true, that the particular congressional subdivisions of alternate sections of odd numbers, which are to constitute the specific lands granted by the act, must be determined, and can only be determined by the location of the line of the road, by an actual survey showing its relations to those sections. The counsel have therefore argued with much force that the act of Congress is not a grant in

presenti, but a grant in futuro, and that, as the particular sections granted must await the location of the road to determine where they would fall, therefore that time and that location must govern, or be looked to as governing, all other considerations bearing upon the extent or limits of the grant. This proposition, however, is obviously
207 unsound, in view of the general course of the road established by the grant. It must be a road from Leavenworth to the southern boundary of the State, in the direction of Galveston Bay, in which Lawrence and the Ohio City crossing are points, and the lands upon which it must operate; or, in other words, the general location and character of the lands which may be taken under the grant are either definitely laid down in the act, or are to be inferred from considerations existing at the time the act was passed. And this is true, whether, in technical language, we call it a grant in presenti or a grant in futuro. In point of fact, it has some of the characteristics of both classes of grants.

As these lands, though then in possession of the tribe, are in the line of the proposed road, and between Leavenworth and the southern boundary of the State, they are lands within the general descriptive terms of the grant, unless they are excepted out of them by other parts of the act or by other paramount considerations.

I am of opinion that on both these grounds the act cannot be held to include these lands.

1. When the act was passed the lands were, and had been for a very long time, in the peaceful and undisputed possession of the Osages. And though the treaty of 1825 between them and the United States did not so far vary their tenure as to give them a fee-simple title, or, indeed, anything but a usufructuary right, it did guaranty to them the exclusive possession and use of these lands "so long as they may choose to occupy the same." This treaty was in full force when the act under which
208 defendant claims was passed, and it is now believed that at that time any proposition to relinquish this possession had been made by the tribe, or any effort by the United States to induce them to do so. To hold, then, as argued by the defendants, that whenever they might choose to locate the line of their road through the Indian territory, the title to the land, with all that full title implies, passed to them by virtue of this act, so far as odd sections, for ten sections in width on each side, would go, is to hold that Congress had violated this treaty provision, had disregarded the generally conceded rights of Indians in such lands, and had authorized a gross injustice to a feeble and ignorant ward of the Government; for if the lands were subject to the grant at all, it must be admitted that no provision whatever is made in the act for the protection of Indian rights, nor even for delay in enforcing the title thus passed to defendants.

When I consider that in the many grants of this character made by Congress they have never, unless in this case, intended to include lands which, by treaty or any other contract, or, indeed, any other equitable consideration, they should not grant, I can hardly believe that they intended, by the use of general terms, necessary to a description of the route of the road, to grant away the lands, which, by all these considerations, they were bound to retain within their own control.

In saying this I do not consider the question of the power of Congress over lands thus situated. I consider only the question of intent of
209 the actual will of the legislative body which they designed to put in the form of a statute. It is this, as in all cases of construction, which must govern; and if it were a question now for the first time

presented to my consideration on these general words of description alone in the grant, I do not see how I could hold that Congress intended to include these Indian lands.

But the case does not rest on these general words of description alone. This was by no means the first act of Congress donating lands to aid in construction of railroads. Millions of acres had been previously granted for the same purpose, and so many statutes of that kind had been passed that the language in which the grants were made had become reduced to settled formulæ, and one of these formulæ, designed to protect rights previously acquired, as found in every other statute of a similar character, is found in this. It is in the shape of a proviso to the granting section in the following words: "That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said road and branches through such reserved lands; in which case the right of way only shall be granted, subject to the approval of the President of the United States."

It will be thus seen that, from the operation of this act, as of all others of like character, and by the settled policy of the Government,
210 there is excepted any and all lands which, by act of Congress, or in any other manner by competent authority, for any purpose whatsoever, is reserved to the United States.

I cannot adopt the criticism of distinguished counsel, that the exception here provided for is limited to lands set apart and reserved for some special use which the Government of the United States may have for them. These acts are all dealing with lands which belong to the United States—lands over which its ownership and dominion are absolute. There is no occasion, therefore, to make of such lands a reservation for the benefit of the United States. But there were many cases in which, while retaining the title, the Government, by some of its branches, had set apart, had reserved for special uses of others and for other uses than those of the Government, lands of the United States. Such is the construction placed upon this clause in the cases of Wolcott v. The Des Moines Navigation Company, (5 Wallace, 681,) and fully reconsidered and adopted in the more recent case of Williams v. Baker, (17 Wallace, 144.) Can it be said with any show of reason that the lands under consideration in those cases which were withdrawn from sale by reason of the disputed claims of the State of Iowa were reserved to the use of the United States.

If, however, this criticism has any just foundation in its application to the general cause of exception found in this and in all other land-grants, it cannot affect the present grant; for in proceedings of the probable failure of the grantee from various causes, to obtain all the odd sections on each side of the road within the prescribed limits
211 by giving other land in place of them, among the causes of such failure are mentioned previous sales or grants, homestead rights, "or that the same has been reserved by the United States for any purpose whatsoever." Now, if the solemn covenant in a treaty made by the United States with a tribe of Indians, that these lands "shall be reserved to and for the Great and Little Osage tribes or nations aforesaid so long as they may choose to occupy the same" is not a reservation by the United States for another purpose than building railroads, it is difficult to comprehend the use of language or what kind of reservation that clause was meant to cover.

I am, therefore, of opinion that by the necessary outlook at the condition of this land when the grant was made, and the gross violation of justice and solemn treaty-rights in the Osages which a grant so construed necessarily implies, Congress did not intend to include these lands in the grants; and, 2, that in each of the two clauses reserving lands from the operation of the acts, they have by apt words expressed the intention that these lands should not be included in the grant. The treaty with the Osage Indians, of which we have been speaking, contains a clause which is relied on by defendants as sufficient to remove any doubt which may arise from the foregoing views, and I now come to consider that branch of the subject. By the first section of that treaty, as originally negotiated and signed on the 29th day
212 of September, 1865, the Osages sold to the United States that part of their lands which includes the land now in controversy with others; and in consideration of this grant and sale to the United States, the Government agreed to pay the sum of $300,000, to be placed to the credit of the tribe in the Treasury of the United States, and that interest thereon, at the rate of five per cent. per annum, should be paid to the tribes. The lands were to be surveyed and sold for cash as public lands are surveyed and sold under existing laws. After re-imbursing the United States the cost of survey and sale, and the sum of $300,000 above mentioned, the remaining proceeds of sale were to be placed in the Treasury to the credit of the civilization-fund, to be used under the direction of the Secretary of the Interior, for the education and civilization of Indian tribes residing within the limits of the United States.

When the treaty was under consideration in the Senate, that body made numerous verbal amendments, and among others not merely verbal they inserted after the word "laws" the words "including any act granting lands to the State of Kansas in aid of the construction of railroads through said lands." To this amendment, made June 26, 1866, the Indians consented. So that this part of the treaty, as finally proclaimed January 21, 1867, reads as follows:

"Said lands shall be surveyed and sold under the direction of the Secretary of the Interior, on the most advantageous terms for cash, as public lands are surveyed and sold under existing laws, *includ-*
213 *ing any act granting lands to the State of Kansas in aid of the construction of a railroad through said lands*, but no pre-emption claim or homestead settlement shall be recognized." (14 Statutes at Large, 687.) The phrase thus inserted, and here italicised, is supposed by the defendants' counsel to have reference to the lands now in controversy, and to have the effect of subjecting them to the railroad-grant. The difficulty of determining what is their precise meaning, in the connection in which they are employed, is very great. As regards their influence on the decision of the question before us, they may be, or rather must be, considered in one of these lights:

1. As granting by treaty, and by force of their own meaning, lands to aid in the construction of this railroad which had not been so granted before.

2. As placing, by means of a treaty with these Indians, a construction upon the doubtful language of the act of Congress which we have already considered.

3. As a recognition by competent authority of the existence of such a grant, which must necessarily be the act aforesaid.

1. The first of these propositions is wholly inadmissible. Conceding the doubtful proposition that it was within the power of the President and Senate and this tribe of Indians, without the assent of the House

of Representatives, to have appropriated these lands to such a purpose, they have expressed no such intention. Whatever the language may or may not mean, it is clear that it was not intended to go beyond existing laws. It did not design to make any new law or confer any new right.

2. Nor is it easy to believe that the Senate of the United
214 States would undertake, in a treaty with Indian tribes, to construe an act of Congress. If they did, they certainly could intend to go no further than to express their own understanding of the meaning of statute, without designing to give to that expression the authority of a legislative construction. Neither the Senate alone nor in conjunction with the President is authorized to construe acts of Congress so as to bind the legislative and judicial departments of the Government.

In saying this it is not intended to deny that any contract in such a treaty, by which rights are conferred on either party to the treaty, based upon a construction of an existing act of Congress, may be valid, and the contract be construed as it was understood by the parties. But in this case neither the State of Kansas nor the defendant corporation were parties in the treaty, nor was it the purpose of the treaty as amended, to confer any new right on these or either of them.

Nor do the words inserted, or the language of the treaty as amended, imply any intention to construe the act of Congress granting lands to this road. The act is not recited or referred to, except inferentially. No doubt or question of its construction is raised or decided. If referred to at all, it is hypothetically, as "any law granting lands to aid in constructing a railroad through said lands." Of course if there was no such law, this treaty did not undertake to make one.

3. But the force of this phrase in the treaty must rest on the
215 third proposition I have suggested, namely, that it is a recognition of the act we have been considering as a grant of these lands.

I have no hesitation in expressing my belief that the Senator, whoever he may have been, that suggested that amendment had in his mind the act which we have already construed, and that his purpose was to incorporate into the treaty a recognition of the validity of the grant, so that the treaty should not defeat it. There may have been in his mind, there probably was, a doubt of the right of Congress to make such a grant in the face of the treaty of 1825.

The treaty now under consideration, originally presented to the Senate, provided for the sale of all these lands, and for the disposition of all the money arising from such sales, in a manner inconsistent with such a grant. With these two treaties staring him in the face, he must have felt the doubt whether the grant, even if by its terms it had included these lands, would be upheld as valid. To remove the argument which might be drawn from this treaty as originally made, it was easy to induce the Senate and the Indians to recognize any right which may have been acquired by that act, or any other which was an existing law when the treaty was ratified by the Senate. In consenting simply to this, the Senate would feel that no wrong was done because no new right was conferred by or concealed in the amendment. At the same time as
the new words introduced designated no specified statute or law,
216 the attention of the Senate was not probably directed to this particular statute. But as no other law was then in existence, so far as is shown to us, which, by remotest inference, granted lands to aid in constructing a road through these lands, I must believe that the framer of this amendment had this one in his mind.

The true intent and meaning of the clause in the mind of the Senate seems to have been this: that, as the treaty directed all these lands to be sold, and made provision for the disposition of all the proceeds, and as it was suggested that there might be a railroad grant or grants which covered some of the lands thus directed to be sold, this provision was inserted to remove or prevent a conflict between the treaty and the statute if any such existed.

But this provision, intended to prevent the treaty from defeating the statute if such existed, is now relied on to give the statute a construction which we have already said was forbidden by its own terms. Leaving out of the case the want of authority in the treaty-making power to construe statutes for the courts, and the improbability that the Senate would attempt in this mode to give a construction to the act of Congress, it is clear that they did not intend to *to* this. They meant to say that this treaty shall not, by reason of its comprehensive terms in disposing of these lands, destroy existing rights. It recognizes existing laws, and in the sale of these lands and disposal of the proceeds, existing laws
217 shall be respected, if any exist, appropriating any part of these lands. But it certainly did not intend to declare what rights existed, or to construe statutes on which rights might depend, or to create rights in that regard which did not exist independent of the treaty.

As I have already expressed my clear conviction that the act of Congress did not grant any of these lands, but by express language excepted them out of the grant, I cannot give to this ambiguous phrase in the treaty, after conceding to it the meaning most favorable to the defendants of which it is susceptible, the effect of creating a grant of these lands where none existed before. These propositions, in my judgment, dispose of the case. They require that the patents issued by the United States for these lands be set aside, annulled and held for nought, and that the defendants be decreed to have no title in any of the lands in question, and perpetually enjoined from asserting such title.

DILLON, *Circuit Judge:*

I fully concur in the conclusion reached in the foregoing opinion, and in the reasons advanced to support it.

Decree accordingly.

218 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and perfect copy from the record of all the proceedings had in said court in the case of The United States vs. Missouri, Kansas and Texas Railway Company, No. 966. I further certify that the original maps and documents herewith transmitted were used as evidence on the trial of the cause in the record, as per agreement, and were ordered by the court to be sent up with the appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said district of Kansas, this 26th day of September, A. D. 1864.

[SEAL.] A. S. THOMAS, *Clerk.*

(Indorsement on cover:) No. 763. The Missouri, Kansas and Texas Railway Company, appellants, vs. The United States. Kansas C. C. U. S. Filed 10th December, 1874.

Supreme Court of the United States.

OCTOBER TERM, 1875.

MISSOURI, KANSAS AND TEXAS RAILWAY CO., Appellant,

vs.

THE UNITED STATES.

No. 471.

BRIEF FOR THE APPELLANT.

ASSIGNMENT OF ERRORS.

1st. That the court below granted the relief prayed for in the orator's bill, and did decree that the legal title to the lands described and claimed by the defendant and included within the limits of the so-called treaty lands mentioned in the bill were and are vested in and of right belong to the United States in trust for the uses and purposes specified in said first article of the treaty mentioned in the bill.

2d. That said court did decree that the patents to the defendant below, or a portion of said land described in the first article of said treaty, and marked exhibit A, B, C, and D, respectively, to be null and void, and without authority of law, and that said defendant below be perpetually enjoined from setting up any claim, either in law or equity, in or to any of said lands situate, lying, and being within the boundaries of said Osage ceded lands described as aforesaid in the first article of said treaty mentioned in said bill, and that the same be null and void, and held for naught.

3d. That the court below, contrary to its duty in the premises, refused to decree that the said patents respectively

mentioned in the record were lawfully issued for the benefit of the appellant, and that they constituted the lawful muniments of title to said lands to the grantees therein named, and to all persons claiming by, through, or under them.

CASE.

The answer is responsive to the bill, and there is no attempt to disprove it or the documents and proofs produced by the appellant.

Upon the undisputed facts, then, it appears :

1st. That the lands in question, now lying in a belt along a considerable part of the southern border of Kansas, and blocking up the great natural avenue of communication by railway between Missouri and the States of the northwest, and Arkansas and Texas, were in 1825 "Indian lands," and were then made the subject of a treaty between the United States and the Osage Indians. (7 Stat., 240.)

By the first article there was a general cession of a large tract of land with definite boundaries; by the second article "within the limits of the country above ceded and relinquished there shall be reserved to and for the great and little Osage tribes or nations aforesaid, so long as they may choose to occupy the same, the following described tract of land"—describing the belt across which this railroad runs, and in respect of which the question in this cause arises.

2d. These tribes continued to occupy the lands accordingly, and were so in occupation on the 3d day of March, 1863, when Congress passed the act "for a grant of lands to the State of Kansas in alternate sections to aid in the construction of certain railroads and telegraphs in said State," under which act the appellant would become entitled to claim the right of way and alternate sections of land for a considerable distance, but not the whole way, across the same to the southern boundary of Kansas.

3d. That on the 29th of September, 1865, the tribes still occupying the land, a further treaty was made with them by the United States, which was ratified by the Senate

June 26, 1866, and which was proclaimed January 21, 1867. By this treaty the Indian tribe ceded to the United States that part of the belt out of which the question in this case arises for $300,000 in cash, and with the further provision that "said lands shall be surveyed and sold under the direction of the Secretary of the Interior on the most advantageous terms for cash, as public lands are surveyed and sold under existing laws, including any act granting lands to the State of Kansas in aid of the construction of a railroad through said lands, but no pre-emption claim or homestead settlement shall be recognized." (14 Stat., 687.)

4th. That the appellant is the lawful successor of the Union Pacific R. R. Co., southern branch, and has succeeded to all its rights, as well as those of the Atchison, Topeka and Santa Fe R. R. Co. (Record, fol. 169, 170, 171.)

5th. That on the 26th of July, 1866, Congress, by act of that date (14 Stat., 289,) granted to the State of Kansas for the purpose of aiding the Union Pacific R. R. Co., southern branch, to construct and operate a railroad from Fort Riley, Kansas, or near said military reservation, thence down the valley of Neosho river to the southern line of the State of Kansas, with a view to an extension of the same through a portion of the Indian territory to Fort Smith, Arkansas, * * * every alternate section of land, or parts thereof, designated by odd numbers, to the extent of five alternate sections per mile on each side of said road, * * * but in case it shall appear that the United States have, when the line of said road is definitely located, sold any section or part thereof granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to select lien lands, &c. Then follows this proviso, "that any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding any object of internal improvement or other purpose

whatever, be and the same are hereby reserved and excepted from the operation of this act, except so far as it may be found necessary to locate the route of such road through such reserved lands, in which case the right of way, 200 feet wide, is hereby granted, subject to the approval of the President of the United States."

The 2d section provides that the sections and parts of sections which, by the aforesaid grant, shall remain in the United States within 10 miles on each side of said road shall not be sold for less than double the minimum price of public lands when sold.

The 3d and 4th sections provide for the special and valuable considerations to be received by the United States for the grant.

The 8th section authorizes the extension of the road through the Indian territory with the consent of the Indians, &c.

The 9th section declares "that the same grants of land through said Indian territory are hereby made, as provided in the first section of this act, whenever the Indian title shall be extinguished by treaty or otherwise, not to exceed the ratio per mile granted in the first section of this act, provided that said lands become a part of the public lands of the United States."

6th. The lands ceded by the treaty of 1866, lying in the Neosho valley to the southern line of Kansas and the Indian territory beyond, were the great theatre in which the enterprise provided for by the acts above cited was to be carried on.

7th. Accordingly, under and in pursuance of the latter act, the appellant, having accepted its provisions, surveyed its line across this belt and the Indian territory, and soon after the 21st of January, 1867, the proper maps of definite location were filed in the office of the Secretary of the Interior, and afterwards and on the 2d of January, 1868, the Secretary withdrew the lands by alternate sections, now in dispute, and the appellant proceeded to build, equip, and

operate the line in full conformity with its duty in that behalf. (Record, fol. 174, 175, 176, 177.)

8th. That in order to raise money to reimburse the enormous expenditures it mortgaged all its lands and rights, including those in question, which were the chief and more important part of them, and the bonds issued under such mortgage were taken by persons advancing money upon the faith of the security of these lands, based not only upon the treaties and acts before referred to, but upon the solemn decision of the executive department of the Government charged with the duty of administering the law, that the lands in question belong to the appellant.

POINTS.

I. 1st. By force of the treaty of 1825 these lands became the public property of the United States, subject to no special appropriation by or for them. It was completely free, saving the right retained by the Indians under the treaty of cession to occupy it during their pleasure. How long they should do so, or upon what inducements they should cease, was a matter left entirely to their will, and not to any action of the Government.

It was perfectly competent for the United States, without any breach of faith, to grant or dispose of the lands at any time, subject to the Indian occupancy; and whenever the Indians should retire of their own choice, no matter whether that choice should be produced by a railway company or by the Government, the title of the grantee would become useful by his possession. Under its sovereign power and consistently with the treaty the Government could, as it did by the acts in question, authorize the passage of a railway through the territory, for that would not in a general sense oust the tribe as such, of its possession any more than the building of a post road through a State would overturn the occupancy of the people of it.

2d. There was nothing, therefore, necessarily inconsistent with the treaty in the act of 1863, assuming that it

granted to the State alternate sections of the lands; for the grant would be construed to operate to convey precisely the estate held by the grantor—*i. e.*, the general fee, subject to the particular estate of the tribe, being a right of occupancy at will.

II. By the treaty of 1865–'66 the Indian estate was confessedly extinguished for a consideration in cash, in part a definite sum named, and in part to be measured by the sum which the lands should bring at public sale. There was nothing in the nature of a trust about it. The provisions about sale were purely and simply a method of ascertaining what should be a fair price; as much so as if a price per acre being fixed, a measurement was to be had, in order to ascertain the sum total.

Pre-emption and homestead settlements, which are the sole basis upon which appeals to the sympathy of the court have been made, were expressly forbidden. For these would have a direct tendency to diminish the sum to be received for the land. On the other hand, the provision that the sales should be made under existing laws, including any act granting lands to Kansas in aid of the construction of a railroad through them, had a direct tendency to benefit the tribe; for it was well known that nothing so much enhanced the value of vacant lands as their near proximity to a railway. Confessedly, both the act of 1863 and 1866 *were* acts of the description named, and looking to them for a definition of the *modus* of sale prescribed in the treaty, we find that the alternate ungranted sections shall be sold for not less than the double minimum. The treaty, therefore, declared, in effect, that the even-numbered sections lying along and within ten miles of the road of the appellant should be sold at public sale at not less than $2 50 an acre, and that there should be no pre-emption or homestead rights therein, and, as a necessary consequence, that the odd-numbered sections should not be sold, but be devoted to the purposes specified in the granting act.

To reach any other conclusion, we must either repudiate

the treaty or else hold that, in defiance of the acts of 1863 and 1866, to which the treaty refers, all the sections, both odd and even, in the whole ceded tract, shall be sold at not less than double minimum.

The same conclusion precisely would follow if we say that the first article of the treaty creates a trust. The language means the same in either case. However unusual it may be in dealing with the Indians, it is no violation of a treaty for the United States to do precisely what it promised.

That it was competent to make these provisions by treaty appears from the uninterrupted practice of nearly one hundred years in such cases, from the Constitution, and from the following decisions:

Turner *v.* American Baptist Missionary Society, 5 McLean, 349.
United States *v.* Schooner Peggy, 1 Cranch, 110.
Ladiga *v.* Roland, 2 How., 581.
United States *v.* Brooks, 10 How., 460.
Fellows *v.* Blacksmith, 19 How., 372.
Foster *v.* Neilson, 2 Pet., 314.
The Cherokee Tobacco, 11 Wall., 621.
Joy *v.* Holden, 17 Wall., 211.

We do not say that, in the absence of the acts of 1863–'66, this treaty would have had the effect to create or recognize any right in the appellant to these lands; but those acts, it is submitted, *do* furnish the state of things called for by the treaty, and supply it with the complete means of operating upon the lands in question, leaving the odd sections entirely free to the complete operation of the grant to the State.

III. When the act of the 12th July, 1866, was passed, the treaty had been ratified by the Senate in the form in which it now stands, and, if it takes effect by relation from its date, as we submit it does, was already in force. But in any case, as the treaty and the act were both complete public acts of the Government bearing upon the disposition of these

lands, and being substantially contemporaneous, the court is bound to consider each in order to throw light upon the true interpretation of the other. Reading, then, the act of 1866 in the light of the treaty and the existing circumstances, we submit that it is plain that the appellant, on filing its map after the proclamation of the treaty and complying with the act of 1866, became lawfully and justly entitled to the odd sections. And so, also, under the act of 1863 for the distance covered by that act.

1st. The language in the act describing the particular lands withheld from the grant must be forced in order to touch them at all. They were not in any sense reserved by any act of Congress *to the United States*, nor to the United States in any other manner by competent authority. The act does not exclude lands reserved to any party by any competent authority, but only lands reserved to the United States in any manner by competent authority.

2d. The act contemplated the building of the road through the whole of the Indian territory, and provided in respect of that extension, in terms, for the same grant of lands as had been made in aid of the road to the southern border of Kansas, subject to the extinguishment of the Indian title; which would be absurd and nugatory if the proviso excluding lands from the grants means what is claimed by the other side, and speaks from the date of the act.

3d. It is impossible to conceive any reason for the United States withholding the alternate sections in these ceded lands, under the circumstances, and providing for granting them through the Indian territory. Why should not the Osages be allowed to assent and surrender their title as well as the confederated tribes? Admit, for argument's sake, that the lands could not be taken by the railway without their consent, could not the United States grant subject to that contingency?

4th. Upon principles of law as well as justice the act, in

respect of ascertaining what particular sections are to be taken by the railway and what withheld from the grant, must be read as speaking at the date of the definite location of the line. That time is the only one essential in protecting the interests and adjusting the rights of both parties to the contract. Whatever land is free, then, from special appropriations, and may rightly be supplied to the undertaking, is given without reference to what its condition may have been at some prior and remote period of time, and whatever land is then under appropriation to other and special uses is to be withheld, although at the date of the act it may have been entirely open.

We respectfully submit that it is not a good answer to this suggestion to say that the act fixes the general line of the route so clearly that it must pass through the Osage lands. Had the act named the fact in terms that the line should pass through the Osage lands, still within what particular ten miles it might go would be legally uncertain, or, even if not, the thing to be ascertained was what particular section or sections along the definite location could at the time of the location be made available to aid the railway, and what could not. Indeed, as to the right of way itself, it cannot be maintained that it attached to any particular tract so as to create a title in the grantee until the line should formally be located.

Would it not be absurd to hold that the word, "heretofore," in the proviso would exclude from the operation of the grant, lands reserved for the use of the Indians by treaty or by law in 1806, which reservation had been lawfully broken up and abolished in 1810? *Hæret in litera, hæret in cortice.*

Again, it will be noticed that the proviso immediately follows the clause in the act providing for the selection of the alternate sections, and for giving lieu lands in the place of those which, *at the time of the definite location*, shall have been sold, reserved, or otherwise appropriated. The proviso must be read in connection with that clause, and, if possible, be made to harmonize with it. This is

done by construing it as speaking as of the same time that the clause does, upon which it is a limitation. To construe it as speaking at a different and earlier time would, beside the absurdity already mentioned, produce the result of denying all lieu lands to the company in respect of any reservations, &c., existing at the date of the act, even if they had ceased at the time of the location and were yet withheld from the company, for the company is to have lieu lands only in respect of reservations, pre-emptions, &c., existing at the date of definite location; while if the proviso be read literally and independently, there is no grant at all of anything that had at any time before the date of the act been reserved for any purpose whatever, although such reservation should have, half a century before, been abolished.

5th. It will be seen that the proviso itself reserves and excepts the appropriated lands "from the operation of this act." Now, is it not plain that, so far as the ascertaining of what sections are granted, and so, necessarily, on the counterpart, what sections are withheld, the only operation of the act is from the date of definite location? The clause to which the proviso is attached says so. It is reasonable that it should be so, and if it were held otherwise it would seem that sales and reservations made by the United States after the passage of the act and before definite location must be disregarded, for it is only this very proviso which on the face of it makes the exceptions to the grant.

6th. No instance can probably be found in the history of legislation or of law in which the granting or acting part of a statute is made to operate at one date, while the limitation upon it is made to operate at a prior one.

7th. Can it be doubted that, had the Indians made a simple cession of their rights to the United States prior to the passage of the act of 1863, these lands would have fallen under the operation of it, and under that of 1862?

8th. If the lands would have thus passed, would they not also have passed had the Indians by treaty consented that Congress might appropriate the lands in the usual way to railway purposes, giving the Indians the benefit of the increased price from the public sale of even sections?

9th. This last is precisely, in substance, what the Indians did do. They extinguished their right to occupy, absolutely and finally, for a consideration in money, to be measured by the sum of the sales carried on according to the method applicable to the sale of public lands under the acts of 1863 and 1866; that is to say, for the increased price to be got out of the sale of the even-numbered sections within ten miles of the railway, and of all the sections without that limit.

IV. We submit, then, that the following resulting propositions are fairly established:

1st. That the treaty of 1825 left the lands perfectly free to be granted by the United States, subject to the occupancy of the tribe during its pleasure.

2d. That such a grant might be made in the general interests of the public welfare without a special reservation of the Indian rights, for the grantee would take the estate *cum onere*.

3d. That the acts of 1863 and 1866, did so grant such lands, so that while the ultimate right of the grantee, upon performance on his part, would be secure, the enjoyment of his right, as well as that of the United States, in respect of the even sections, would remain in abeyance until the Indian right of occupancy should be extinguished. And, indeed, this had occurred prior to the act of 1866.

4th. That the lands in question were not, within the meaning of the acts, reserved to the United States on account of the mere circumstance that the Indians, like the

roaming tribes of the boundless interior, had a right of occupancy.

5th. That the acts of 1863 and 1866, in respect of the point in contest, are to be applied to the state of circumstances existing at the date of the definite location of the appellant's road, rather than at the date of the act.

6th. That at that date the Indian right of occupancy had ceased, and the lands, by treaty, were to be disposed of as public lands coming under the operation of *any* act, past or future, granting lands to Kansas in aid of a railway to be built through them; and so if any reservation ever existed it had ceased.

7th. That the appellant, having performed all the duties required by the acts of 1863 and 1866, and having received therefor the patents of the lands upon the solemn adjudication of the Government, ought not to be disturbed in their disposition.

GEO. F. EDMUNDS,
Of Counsel.

In the Supreme Court of the United States.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, APPELLANT,
vs.
THE UNITED STATES OF AMERICA.

BRIEF AND ARGUMENT FOR THE UNITED STATES.

GEO. R. PECK, *U. S. Attorney, District of Kansas.*

roaming tribes of the boundless interior, had a right of occupancy.

5th. That the acts of 1863 and 1866, in respect of the point in contest, are to be applied to the state of circumstances existing at the date of the definite location of the appellant's road, rather than at the date of the act.

6th. That at that date the Indian right of occupancy had ceased, and the lands, by treaty, were to be disposed of as public lands coming under the operation of *any* act, past or future, granting lands to Kansas in aid of a railway to be built through them; and so if any reservation ever existed it had ceased.

7th. That the appellant, having performed all the duties required by the acts of 1863 and 1866, and having received therefor the patents of the lands upon the solemn adjudication of the Government, ought not to be disturbed in their disposition.

GEO. F. EDMUNDS,
Of Counsel.

In the Supreme Court of the United States.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, APPELLANT,
vs.
THE UNITED STATES OF AMERICA.

BRIEF AND ARGUMENT FOR THE UNITED STATES.

GEO. R. PECK, *U. S. Attorney, District of Kansas.*

In the Supreme Court of the United States.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, APPELLANT,
vs.
THE UNITED STATES OF AMERICA.

This suit is so much like the one against the Leavenworth, Lawrence and Galveston Railroad Company, that they might have been considered together. The same principles are involved, and the arguments which apply to that case apply also to this, and need not be repeated. Both companies claim grants through the Osage lands; and it is worthy of notice that, before they united in a joint crusade against these lands, there was a prolonged and bitter controversy between them as to which company should secure the grant. Each demonstrated that the other had no rights there. But the instincts of combination are strong, so that now, instead of wasting time in an angry and unprofitable contest, they have become allies in a common cause, and are stoutly asserting that both have grants.

The appellant in this suit does not claim under the act of 1863, but under the act of July 26, 1866. It is found in 14 Stat. at Large, on page 289. The first section is as follows:

AN ACT granting lands to the State of Kansas to aid in the construction of a southern branch of the Union Pacific Railway and Telegraph, from Fort Riley, Kansas, to Fort Smith, Arkansas.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That for the purpose of aiding the Union Pacific Railroad Company, southern branch, the same being a corporation organized under the laws of the State of Kansas, to construct and operate a railroad from Fort Riley, Kansas, or near said military reservation, thence down the valley of the Neosho River to the southern line of the State of Kansas, with a view to an extension of the same through a portion of the Indian Territory to Fort Smith, Arkansas, there is hereby granted to the State of Kansas, for the use and benefit of said railroad company, every alternate section of land or parts thereof designated by odd numbers, to the extent of five alternate sections per mile on each side of said road and not exceeding in all ten sections per mile; but in case it shall appear that the United States have, when the line of said road is definitely located, sold any section or any part thereof, granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected for the purposes aforesaid, from the public lands of the United States nearest to the sections above specified, so much land as shall be equal to the amount of such lands as the United States have sold, reserved, or otherwise appropriated, or to which the right of homestead settlement or pre-emption has attached as aforesaid, which lands, thus indicated by the direction of the Secretary of the Interior, shall be reserved and held for the State of Kansas for the use of said company by the said Secretary for the purpose of the construction and operation of said railroad, as provided by this act: *Provided*, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improve-

ment or other purpose whatever, be, and the same are hereby, reserved and excepted from the operation of this act, except so far as it may be found necessary to locate the route of said road through such reserved lands, in which case the right of way, two hundred feet in width, is hereby granted, subject to the approval of the President of the United States: *And provided further*, That said lands hereby granted shall not be selected beyond twenty miles from the line of said road."

The proviso annexed to the act of 1863, excluding lands "heretofore reserved," &c., is attached also to this act. This act was passed after the negotiation of the treaty. The treaty having set apart these Osage lands to be "surveyed and sold" for the benefit of the Indians, they were "otherwise appropriated" as much as they were before the treaty.

There is a material difference between this case and the one against the Leavenworth, Lawrence and Galveston Railroad Company, in this, that the act under which the appellant in this case claims was not passed until after the Senate amendment was adopted. Therefore, when the Senate annexed that remarkable amendment to the treaty they could not have had this act in view. Whatever may be said about the Senate amendment recognizing former grants, it could not have recognized this one, because this one had not yet been passed.

I desire to call the attention of the court to section 9 of this act of 1866, because it shows what language Congress uses when it intends to make a grant of Indian lands. It is as follows:

"SEC. 9. *And be it further enacted*, That the same grant[s] of lands through said Indian Territory are hereby made as provided in the first section of this act, whenever the Indian title shall be extinguished by treaty or otherwise, not to exceed the ratio per mile granted in the first section of this act: *Provided*, That said lands become a part of the public lands of the United States."

The court will observe that this grant through the Indian Territory is very carefully limited. The intention is made clear. It recognizes that mere general words only pass title to the public lands, and distinctly says that the grant shall only operate upon the extinguishment of the Indian title, and not then unless the lands become a part of the public lands of the United States. This section 9 sheds light upon the whole subject of congressional land-grants. It illustrates the policy of the Government, which, as everybody knows, is to grant only the public lands.

I wish to notice but one other matter which has been urged in behalf of the claims set up by the railroads to these lands. The companies have mortgaged their property, including, it is said, the lands in dispute. It would seem hardly necessary to say that such action by the railroad companies can shed no light upon the question whether Congress has granted them these lands. I cannot obtain title to a tract of land by giving some one a mortgage upon it. If Congress has not granted these lands to the railroad companies they had no right to mortgage them, and such mortgages cannot operate to vest a title in them.

I do not deem it necessary to add anything further to what was said in the argument of the suit against the Leavenworth, Lawrence and Galveston Railroad Company.

GEO. R. PECK,
United States Attorney, District of Kansas.

1875
1807
68

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1875.

THE LEAVENWORTH, LAWRENCE, AND GALVESTON RAILROAD COMPANY, AND THE FARMERS' LOAN AND TRUST COMPANY, APPELLANTS,
vs.
THE UNITED STATES.
} In equity.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

Synopsis of the oral argument of Wm. Lawrence for the United States, in court, October 21, 1875.

There is no doubt of the title of the United States unless it has been divested by—

1. The act of March 3, 1863, (12 Stat., 772,) and the proceedings under it; or,
2. By the Osage Treaty of 1865–'67. (14 Stat., 687.)

In the same connection are to be considered the joint resolution of April 10, 1869, (16 Stat., 55,) and the "Thayer Act" of April 19, 1871, (17 Stat., 5.)

The rules of construction are settled by this court in *Dubuque, &c., v. Litchfield*, 23 Howard, 88, which was on two acts of August 8, 1846, (9 Stat., 78,) and May 15, 1846, (11 Stat., 10,) which were *precisely like the act of* 1863. Section 3 of this act gives *no valuable consideration* for a grant, so as to change the rules of construction, since it does not require any railroad company *to carry* troops or property, but only permits the *Government to carry*. The history of railroads shows that the original design of their creation was to permit the owners of cars to run them over roads and pay *tolls* therefor, as on canals.

The Government paid the Illinois Central Railroad Co., organized under the land-grant act of Sept. 20, 1850, (which was like the act of March 3, 1863,) for carrying troops during the rebellion. But if this were otherwise, the consideration is wholly *inadequate* to give a different construction to the grant. The act of 1863, sec. 5, requires no *gratuitous* carriage of mails. The case in 23 Howard has become a *rule of property*, and it would be ruinous to change it now. Its rules are, on the *whole, act provisos*, as well as other parts.

THE ACT OF 1863 MAKES NO GRANT IN AID OF RAILROADS IN THE OSAGE LANDS.

The first section consists of three parts:

1. The granting clause.
2. The "indemnity" clause.
3. The provisoes.

The President had no control over "school" or "internal improvement" lands *already granted to the State.* The right of way had *already* been provided in "public lands." Hence the "*only*" right given in the Osage lands was a right of way, "subject to the approval of the President."

g. The act of July 26, 1866, proves it. (14 Stat., 289.) The 9th section disposes of the "Indian Territory" south of Kansas. The 10th section authorizes the Missouri, Kansas, and Texas Company to negotiate with the Osages for *these Osage lands.* It could refer to *no other.*

h. The Osage treaty proves it. It requires a *sale* of *all* the lands. Its 4th article gives 144 settlers 22,315 acres of *odd* and even sections. It in effect says what the Attorney-General said as to the Chickasaw lands, already referred to; they are not public lands, but "shall be surveyed and sold as public lands." (5 Opinions, 603; 1 Lester Land Laws, 516.)

Ergo.—The act of 1863 grants only "public lands."

II. The grant or the *right* conferred by the act of 1863 is *in præsenti*, and was therefore designed only to deal with lands *then* in the absolute ownership and possession of the United States. This is proved by two considerations.

1. The language of the grant "that there be, and *is hereby*, granted," is *ex vi termini in præsenti.*

It was so recognized soon after the land-grant system began. (8 Opinions, 246; 1 Lester, 513.) Because of this, Congress passed the act of March 27, 1854. (10 Stat., 269; act 14 July, 1870, 16 Stat., 279.)

2. This has been expressly decided on a statute precisely like the act of 1863. (8 Opinions, 257; 11 Opinions, 47; Opinion December 19, 1856; 1 Lester, 513; R. R. Co. vs. Smith, 9 Wallace, 95; Schulenberg vs. Harriman, 21 Wallace, 60.)

It is urged (Edmonds' Brief, 5) that "it was perfectly competent for the United States without any breach of faith to grant or dispose of the lands at any time subject to the Indian occupancy."

There are seven objections to this.

1. There is no grant *cum onere* except "*only*" a right of way on condition; whatever else was granted was granted *absolutely*, and hence the grant could not apply to the Osage lands.

2. The grant, wherever it was, carried the right to make railroads, depots, &c. If Congress could do this, they could give like rights to *many roads.* This would violate the treaty of 1825, under which the Government retained *no right* in the "reserved" lands but to navigate the rivers and maintain teachers and agents. *Expressio unius exclusio alterius.* The act of 1863 made no provision to respect Indian rights. It is incredible to believe a grant was made *cum onere* with no provision to *protect* Indian rights.

3. There is no grant by way of *warranty* or *estoppel.*

Authorities cited, Lawrence's Brief, 86.

4. The last proviso of section one of the act of 1863 shows nothing was granted in the Osage lands but a right of way "*only.*"

5. The act of July 26, 1866, (14 Stat., 289,) aids in the construction of the act of 1863. It *does* make a grant in the Indian country *cum onere* on two conditions: (1) the extinction of the Indian title, and (2) that the lands become "public lands." If the act of 1863 had intended to make a grant *cum onere*, it would have employed equivalent language.

Besides this, the act of 1866 gave the M. R. & T. R. R. Co. the right to negotiate *for those* Osage lands *because they had not* been granted away, either *cum onere* or otherwise.

6. The Osage treaty of 1865–'67 construes the act of 1863 as not having made a grant. Its article 4 sells one hundred and forty-four tracts

The granting clause is *limited* by (1) general principles, laws, and treaties; (2) by the "indemnity" clause, and (3) by the provisoes.

Each clause may be considered separately.

THE GRANTING CLAUSE.

I. The "granting clause," even without the limitations imposed on it by the indemnity clause and provisoes, makes no grant of the Osage lands, for three reasons:

1. The grant only deals with "public lands," and these were not in 1863 and never became such. "Public lands" are those owned absolutely by the United States in their own right, which are *held* for disposition by public sale, private entry, or otherwise, and which are not devoted to any other use specified by or in pursuance of a treaty or act of Congress.

Opinion, August 4, 1852, on act August 4, 1852, 10 Stat., 28; 5 Opinions, 578; Spalding vs. Martin, 11 Wisconsin, 262; Wilcox vs. Jackson, 13 Peters, 498; Opinion, August 7, 1852; 5 Opinions, 603; Act July 26, 1866, sec. 9, 14 Stat., 289; Holden vs. Joy, 17 Wallace, 233; Wood vs. M., K. & T. R. R. Co., 11 Kansas, 323, cited in Lawrence's brief, 31, 100, 101, 115, 116, 117, 118.

An Indian "*reservation*" does not become "public lands" by a treaty requiring its sale for the benefit of the Indians. Holden v. Joy, 17 Wallace, 233.

Opinion Atty. Genl., August 7, 1852, 5 Opinions, 603; 1 Lester, 516, cited; Lawrence's brief, 101.

Ergo.—The Osage lands were not in 1863 and never since became "public lands."

The act of 1863 *grants* ONLY "*public lands,*" *for eight reasons:*

a. That it did grant public lands is conceded. When it had *a subject* to operate on which meets its purpose, it will not be extended to *others*, unless such purpose be clear, and it is not.

b. The grant is of "every alternate *section.*" There can be no "sections" in an Indian reservation.

c. The lands granted were such as "shall be disposed of as the work progresses through the same."

The railroad might be made in a year. It cannot be supposed Congress intended to make a grant in Osage lands, then "*reserved*" to the Indians by the treaty of 1825.

These lands could not "be disposed of as the work progresses" without a violation of the treaty.

d. The lands which *were* granted were *only* those in which there could be "homestead" and "pre-emption" entries; that is, "public lands." (Holden *v.* Joy, 17 Wallace, 233; Wood *v.* M., K. & T. R. R. Co., 11 Kansas, 323.) There could be none in the Osage lands, either in 1863 or since. The treaty of 1865–'7 excludes them.

e. The "indemnity clause" of the act of 1863 shows that none but "public lands" passed by the grant. It *expressly* limits indemnity to *such* lands; but the grant was to be only of the same sort—the "nearest tiers of sections."

f. The last clause of section 1 of the act of 1863 gives a right of way "*only*" through the *reserved* lands, "subject to the approval of the President."

This could refer to no lands but the Osage lands, for *there were no other* "*reserved lands.*" The President's *approval* was required, so as to protect the "reserved" treaty rights of the Indians.

of land, *odd* and even sections, ignoring the existence of a prior grant.

7. The usage is against it.

The railroad land-grant system commenced with the act of September 0, 1850. There were then and since about one hundred and sixty Indian reservations. Many of the roads in favor of which grants were made passed through reservations. The reservations have been uniformly sold under treaties, and the proceeds applied for the benefit of Indians. Yet if the land-grant acts made grants *cum onere*, all these treaty sales would be void. To so hold would destroy the titles to millions of acres of land. (See Lawrence's brief, 88–93.)

There is cited in opposition to this the opinion of Judge Black, Attorney-General, June 3, 1859; 9 Opinions, 346; 1 Lester, 505.

That was on the act 8 August, 1846.

a. That act had no *proviso* exception, as has the act of 1863.

b. The lands covered by it became "public lands." The Osage lands did not.

c. The following authorities are a sufficient reply to all that has been said as to this:

Opinion as to Chickasaw lands, 5 Opinions, 603.

Wilcox *v.* Jackson, 13 Peters, 498. Spalding *v.* Martin, 11 Wisconsin, 262. Opinion August 4, 1852. 5 Opinions, 578. (See Lawrence's brief, 101, 114, 115.)

d. Congressional grants not warranties, and do not operate by way of estoppel. Hence impossible that the *Indian title*, when blended with the fee, could pass. (See Lawrence's brief, 86.)

e. The usage under all grants above referred to.

Ergo.—The act of 1863 made no grant *cum onere.*

III. These Osage lands were excluded from the grant by—

1. General principles of public law. United States *v.* Cobb, 19 Wallace, 591–3; Cherokee Nation *v.* Georgia, 5 Peters, 1. (See Lawrence's brief, 97–98.)

2. The Osage treaty of 1825 thus "reserved" the lands to the Indians. The reservation was in force in 1863, until the Osage treaty of 1865–'7 took effect, and after. And this treaty *continued to reserve* the lands from the operation of the act of 1863, just as the Cherokee treaty reserved the Cherokee neutral lands from the pre-emption act, as decided in Holden *v.* Joy, 17 Wallace, and just as the Chickasaw treaty continued to reserve the Chickasaw lands from the act of 1850, as decided in 5 Opinions, 603; 1 Lester, 516.

3. Other laws still in force excluded the Osage lands from any grant, act June 30, 1834, 4 Stat., 729, sec. 11; act January 9, 1837, 5 Stat., 135. (See Lawrence's brief, 99–102.) The treaty of 1865–'7 extended the *policy* of these laws to the Osage lands by requiring a sale of ALL of them, just as numerous other treaties nearly contemporaneous made similar provisions. For these, see Lawrence's brief, 102, &c. A *policy* once adopted by the Government gives construction to laws. Planters' Bank *v.* Union Bank, 16 Wallace, 483; Morton *v.* Nebraska, 21 Wallace, 660; Holden *v.* Joy, 17 Wallace, 211.

Ergo.—If this case stood on the *granting clause* of the act of 1863 even without the provisos there was no grant of these lands.

THE INDEMNITY CLAUSE.

This does not enlarge the original and only grant *in præsenti* so as to attach it to lands in which the Indian right of occupancy may be thereafter extinguished.

This is so for three reasons:

I. *It makes no grant at all.*

1. The *granting clause* does that. The indemnity clause has a wholly different purpose, which is to give indemnity lands.

2. Its purpose is *not to fix the time* when the *grant takes* effect. The granting clause does *that—in præsenti.*

3. The words of the clause "*granted as aforesaid*" refer the grant, and all that can fix its time of taking effect, to the *prior granting* clause.

4. Its purpose is to give indemnity lands outside of the 20 miles of granted limits in lieu of those which are lost from the grant *from its date and taking effect up to the time* "when the lines of road are definitely fixed" by (1) sales, (2) pre-emption entries, (3) homestead-settlements, (4) by a reservation made in that time.

The act of March 27, 1854, (10 Stat., 269,) recognizes the fact that railroad-grants operate *in præsenti*, and because of that, it gives a right to make pre-emption entries on grounds of public policy.

So held Attorney-General Cushing, 8 Opinions, 246; 1 Lester, 543. See Lawrence's brief, 129–132.

II. The indemnity-clause gives indemnity for a *lost right.*

If no right attached until the location of the road, then no right could be lost up to that time by (1) sale, (2) pre-emption, (3) homestead, or (4) intermediate reservation; and there could be no ground for indemnity. The right to *indemnity* which *attaches at the location of the road* presupposes there have been *prior* rights, which have been lost.

A grant cannot take effect in any land, therefore, except such as may immediately after the date of the granting act and at any time before the location of the road be (1) *sold*, (2) *pre-empted*, (3) *covered by homestead*, *or* (4) *reserved by law passed since the granting act for some purpose of occupancy; and hence, as the Osage lands were not subject to disposition in any of those modes in* 1863, the act of 1863 *could not and did not make* a *grant* therein.

III. The usage under other laws shows that the act of 1863 could not operate as a grant in the Osage lands, *even if the Indian title had been extinguished*, (as it was not,) when the route of road was "definitely fixed."

1. The pre-emption act of September 4, 1841, 5 Stat., 453, sec. 10, gave a right to make pre-emption; but (like the act of 1863) excepted from its operation "Indian reservations." It has always been held that the subsequent extinction of the Indian title did not cause a right of pre-emption to attach.

Because of this, Congress passed the act of July 22, 1854, (10 Stat., 310, sec. 12,) to make lands subject to pre-emption when the Indian title should be extinguished.

In Holden *vs.* Joy, 17 Wallace, 233, it was held a treaty which provided for a sale of an Indian reservation (like the Osage treaty of 1865–7) did *not* extinguish the Indian title.

2. This is the effect of Wilcox *v.* Jackson, 13 Peters, 498; Spalding *v.* Martin, 11 Wisconsin, 262; Rep. Sec'y Thompson, No. 81, 2d sess. 35 Congress, Jany. 24, 1859, vol. 7 Executive Docs.; Walcott *v.* Des Moines Co., 5 Wallace, 687; Sargent *v.* West. Pacific R. R., 13 Opinions, 388; "Boyd's Appeal," decided by Assistant Atty. Genl. Smith, April 28, 1871, a certified copy of which the court has. (See Lawrence's brief, 114.)

3. If this be not so, then in every case where there has been a *military reservation*, the *site of a fort*, a *custom-house*, *school-lands*, grounds for *public buildings*, within the limits of a railroad grant, they would *inure to the grant* the *moment they ceased to be used for* such purposes.

All this is denied by the authorities already cited *last above.* (See Lawrence's brief, 136, 137, &c.)

Ergo.—Upon the "indemnity clause" alone, or *with the "granting* clause," no grant *ever* took effect in the Osage lands.

THE PROVISO.

The "proviso" expressly excepts the Osage lands from the grant.

It operated *in præsenti, and continued to operate,* to except the Osage lands from grant "when the routes of the road were definitely fixed."

The treaty of 1865–7 did not "extinguish" the Indian title, but was *itself* a "reservation" within the meaning of the *proviso.* To present the points of the argument on these subjects propositions may be stated separately, as follows:

I. The *proviso* expressly excepted the Osage lands from the grant for three reasons:

1. There was *no other reserve* to which the proviso could apply on the road of the L. L. & G. R. R. Co. but the Ottawa and Osage "reserves." The Leavenworth military reserve is three miles north of Leavenworth City. The proviso excepts reservations "through" which the road was to run—the Osage and Ottawa.

2. The proviso *spoke from its date. It* is *in præsenti,* necessarily so, to meet the grant *in præsenti.* But it operates in the present *and future.* Its language is, "hereby reserved from the operation of this act." When reserved? Hereby, now, *forever.* From what "*operation*" of the act? *Every* operation, present or *in futuro*—no limit.

If any future "operation of the act" makes a grant to attach "when the routes of road are definitely fixed" which did not previously attach in *præsenti, then* the Osage lands as an Indian "reservation" are "reserved" from *this* "operation of the act."

There can be no doubt. It is clear. But if there could be a doubt, it is to be resolved against a grant.

3. The treaty of 1825, the policy of the act of 1837, the general policy pursued of selling all Indian reservations for the benefit of Indians, as a means of preserving peace and civilizing them, all require this construction. The treaty of 1865–7, read in the light of all this, requires a sale of all the lands, and *this* reserves the lands *ex proprio vigore,* and the proviso does the same. (5 Opinions, 603; 1 Lester, 516; Chickasaw lands.)

A CRITICISM REPLIED TO.

But a *verbal criticism* is made that the *proviso* only excepts from grant lands reserved "to the United States."

The answers are:

1. The language may be grammatically read as saying that:

"All lands * * * reserved in any manner for any purpose * * * are reserved from the [every] operation [grant] of this act."

This is clear; but if not, the doubt must be in favor of the reservation.

2. Similar provisos have been construed as excepting from grant lands not reserved "to the United States," but granted *from* the United States, reserved by treaty, &c.

Walcott v. Des Moines Co., 5 Wallace, 681.

Williams v. Baker, 17 Wallace, 144.

R. R. Co. v. Fremont, 9 Wallace, 89.

R. R. Co. v. Smith, 9 Wallace, 95.

5 Opinions, 578–603; 1 Lester, 516. (See Lawrence's brief, 75–101.)

3. If necessary, I would say the Osage treaty of 1825 did reserve the lands "to the United States."

It authorized the Government to send agents and teachers to the Indians. The lands were reserved "to the United States" for *that purpose*, and for the purpose of keeping and educating thereon "the wards of the nation."

A MISCONSTRUCTION OF THE PROVISO.—The whole argument for the appellants has been stated as follows:

> "It was only when the location [of the road] was filed that this act [of 1863] began to operate upon any particular land, and of course it was only when the location was filed that this proviso could operate to take anything out of the operation of this act. Now, when that location had been filed, this Osage title had been extinguished."

See page 11.

This is the language of Judge Curtis.

It will be sufficient to say—

1. The Osage title was not "extinguished" by the treaty of 1865–'7.

This is sufficiently shown by the argument of Judge Curtis in Holden *vs.* Joy, 17 Wallace, 233; 5 Opinions, 603; on the Chickasaw lands, 1 Lester, 516.

The treaty of 1865–'7 gave none of the *Indian title* to the United States as theirs. On the contrary, it only conveyed it *to be sold*, and this created a *trust*, or contract, but *not title for any purpose of the act of* 1863.

See authorities, Lawrence's brief, 142–148.

2. The Osage lands never became "public lands," and hence did not inure to the grant. This has been shown.

3. It is unreasonable to believe that Congress intended to put it in the power of the railroad company to fix the time when the grant should take effect, and *to profit by delay*. The act is its own exponent as to when it takes effect.

4. The proviso *could* and *did* operate *in præsenti* upon lands in their then *status*, and lands *then* "reserved," as the Osage lands were, were excepted from *every* "operation of the act," whether *present* or *prospective*, which might be claimed to effect a grant in lands then reserved.

5. The language of the proviso makes this certain: It declares "that all lands HERETOFORE [then, or prior and up to that time] reserved, be, and the same are [now, at the date of the act] hereby, reserved from the [every] operation [present or future] of this act," [grant.]

There are several classes of exceptions from the grant, which are made in the "indemnity clause," "when the lines or routes of said road are definitely fixed:" (1) Lands sold by the Government; (2) lands pre-empted, (3) lands covered by homestead, (4) lands reserved by some law or treaty since the date of the act.

These are all referred to as having been "granted as *aforesaid;*" that is, by the previous granting clause *in præsenti*.

If there had been no proviso, these four exceptions from the grant would exist.

For in R. R. Co. *v.* Fremont, 9 Wallace, 94, the court say on a similar act:

> The reservations annexed to it are very full and explicit. They are first found *in the enacting clause itself*, where provision is made for the selection of lands beyond the lines of the six sections on each side of the road, in case any of the sections have been *previously* "sold or OTHERWISE DISPOSED OF," and then *again in the general* PROVISO *to the grant.*

Now, the proviso must have some *other purpose.* It must reserve *other lands* or it is useless.

It has another purpose, and that is to except from grant, as it says:

(1) "Any and all lands heretofore [before the date of the act] reserved to the United States."

(2) "Any and all lands heretofore [before the date of the act] reserved in any other manner by competent authority for [either] (1) the purpose of aiding in any object of internal improvement [the 500,000 acres given by the pre-emption act to new States, &c.,] or (2) for any other purpose whatever, [the Ottawa and Osage Indian reserves] be, and the same are HEREBY, reserved to the United States from the [every] operation [present or prospective] of this act" [grant.]

This reconciles the whole act. It conforms it with the authorities. It gives it all a purpose.

It may be remarked here that the Ottawa reserve was on the line of this road. The treaty of June 24, 1862, art. 9, 12 Stat., 1240, required a sale of all the lands, but the lands were not all sold at the date of the act of 1863.

The railroad company is in better condition to claim these unsold lands, as covered by the grant, than the Osage lands.

When the act of 1863 passed, the previous treaty required a sale of the lands. The Ottawas had no more title in the unsold lands than the Osages have now in the Osage ceded lands.

But no claim has been made for the railroad company in the Ottawa lands. But if this claim succeeds now, not only these but many other treaty sales will be defeated and titles destroyed.

(6) The clause of the *proviso* which gives a right of way "*through* such [Osage Indian] reserved lands, subject to the approval of the President," proves that no rights were given in these lands but "the right of way *only*," subject to a condition which would enable the President to secure it by treaty.

(7) This question was decided in effect within two years after the land-grant system commenced.

The railroad company is certainly in not so good a condition to claim a grant as if the Osage treaty had been made *prior* to the act of 1863.

Yet, in *just such case*, the Chickasaw lands were held as not covered by a railroad grant. (1 Lester, 516; 5 Opinions, 603; Lawrence's Brief, 101.)

That decision became *a rule of property* early in our land-grant system, and should, therefore, be adhered to.

(8) The treaty of 1865–7 held the *proviso* as excepting lands from grant *then*, and hence its fourth article sold 144 tracts of land and article 1 required a sale of *all* the residue not therein granted to individuals.

(9) When the road was located in November, 1867, or the location filed in 1868, the lands had *not ceased to be reserved.*

The treaty of 1865-7 *continued a reservation.*

At that time the lands were, by the treaty, in the very language of the "indemnity clause," "*otherwise appropriated.*"

Attention has not before been called to these words, but they meet this case precisely.

The proviso, in no less explicit words, sanctions the new treaty "appropriation" and saves the lands "from the [every] operation of the act" *whenever* it can in any way operate. Hence, even if the proviso did not operate as to these lands, until the location of the road, it *then* operated to reserve them from the grant.

10. The treaty of 1865–'67 did not "extinguish" the Indian title so as to make the grant operate, because, if so, the lands would become sub-

ject to pre-emption by force of the act of July 22, 1854. (10 Stat., 310, sec. 12.)

But this was in a similar case denied in Holden *v.* Joy, 17 Wallace, 233; 5 Opinions, 603; 1 Lester, 516.

Ergo: The proviso excepts the Osage lands from any grant under the act of 1863.

THE OSAGE TREATY OF 1865–7.

The purpose of the treaty was to secure a sale of ALL the lands for the benefit of the Indians, and not to acknowledge that there had been a railroad grant.

This is proved by nine considerations:

I. The rule of construction is not only to be strict against a grant, but liberal in favor of the Indians. (See authorities Lawrence's Brief, 57–8.)

II. This purpose is apparent in article one of the treaty, giving *four reasons for a sale*: (1) the "Indians having now more lands than are necessary for their occupation;" (2) "and all payments from the Government to them under former treaties having ceased," (3) "leaving them greatly impoverished," (4) and being desirous of improving their condition *by disposing of their surplus lands*, &c.

No reason is intimated for admitting a railroad grant.

III. The same article directs what shall be done, as follows:

"Said lands shall be surveyed and *sold*."

How much of them?

The treaty answers:

"*Said* lands"—that is, *all* of them.

No rule of law or reason permits the court to say "said lands" do not mean *all* of said land, for there are no qualifying words, or words to limit the amount, and no means to determine *what part*, if not all.

How shall *all* said lands be surveyed and sold?

The treaty gives three directions as to the survey and sale:

1. "Under the direction of the Secretary of the Interior."
2. "On the most advantageous terms, for cash."
3. "As public lands are surveyed and sold under 'existing laws,' including any act granting lands to the State of Kansas in aid of the construction of a railroad through said lands."

Here are the three directions.

To what do they all relate?

Every one to *the survey and sale.*

When a *sale* only is directed, as the *sole* disposition of the lands, it would be a clear *interpolation* or *addition* to say a different disposition should be made by grant of any part in aid of a railroad.

There is not one word here in relation to a railroad grant.

The claim of the railroad company is that the "Senate amendment" shall be read *as it does not:*

"That said lands shall be surveyed, sold, [and granted in aid of the construction of a railroad through said lands,] under existing laws, including any act granting lands to Kansas."

But if this could be (as it cannot) it is subject to the qualification that it must be granted "*for cash.*"

IV. The whole treaty is a clear denial of any railroad grant, for if the lands are *all* to be sold for cash, they *were not* and *are not to be* granted *without cash.* Mr. Edmunds, in his brief, page 7, practically concedes this. He says:

"We do not say that in the absence of the acts of 1863–'66 this treaty would have the effect to *create* or *recognize* any right in the appellant to these lands."

The so-called "Senate amendment" neither creates nor recognizes any right in the railroad company.

1. Whatever its meaning is, it relates to a future "*sale.*"

2. It gives an *option* to the Secretary of the Interior in selling to sell under *any* "existing laws," including any provision relating to a *sale* in the mode in which railroad-lands may be authorized to be sold. But it does not *require* this—it is left optional to *sell* in the mode directed in *any* "existing law."

The "pre-emption law" is such an "existing law."

The clause in the treaty excluding pre-emptions referred to *then existing pre-emptions*, and was designed to deny *them* any favors in advance of others.

3. The true meaning, I think, is this:

a. The Senate inserted this amendment June 26, 1866.

b. The bill was then pending which became a law July 26, 1866, making a grant to the Missouri, Kansas & Texas R. R. Co. (14 Stat., 289.)

c. The Senate knew these lands had never been granted to any Railroad Co., *for no claim had yet been made.*

The Senate intended, that if this bill should be put in a shape to authorize *a sale of those lands to the Railroad Co.*, the treaty should permit a sale thus, as well as by other "existing laws."

d. Whether the 10th section of the act met this purpose is not material.

e. Such treaty sales were usual. The treaty of July 4, 1866, *then pending* authorized a SALE of the Delaware reserve to the Missouri River Railroad Company. (14 Stat. 794, arts. 2–6.) And so the Cherokee treaty. (Lawrence's Brief, 104.)

VI. The treaty makes no allusion to any railroad claim.

The *right of way* is provided for in the treaty, which was unnecessary, if a railroad grant had been made.

The Indians by this treaty *sold* lands even to their kindred and benefactors. They would *not give* it to a railroad company for which they had no concern. No Indian tribe ever made such a gift.

VII. If the two railroad grants made by acts of March 3, 1863, and July 26, 1866, both attach to these lands, *they will take all* or nearly all the lands, and thus *defeat every purpose of the treaty.*

1. If so, both companies take odd sections granted "in place," not merely in one granted limit of twenty miles, but in limits for each road, covering in part only the same lands.

2. The L. L. & G. R. R. Co. could claim as indemnity lands the "odd sections" within the forty-mile limits, and the M. K. & T. R. R. Co. could claim *both odd and even* sections as indemnity over the forty-mile indemnity limits, covering in part different land.

And the *granted limits* of each company would be in part the indemnity limits of the other, for the roads cross each other and run partly parallel, in the Osage ceded lands. This was admitted by Judge Curtis, who said in 1871 "All the lands will be covered." (Lawrence's Brief, 162.)

If the extent of the *right* to indemnity lands does not appear, the court must know such claim would be possible to cover all, and so is the fact.

VII. The omission in the treaty to show how the lands should be divided between the companies proves there was no grant.

Each of the companies claimed priority, and the contest was settled by a compromise. The settlement binds only the companies.

IX. The treaty, article four, gives 144 tracts of land to as many set-

tlers, on odd and even sections. This ignores any railroad grant, for if there had been such, the treaty could not *again* dispose of these.

X. The treaty could not give effect to a railroad grant by any *recognition* or *construction*. That would usurp *judicial power*. (Dash *v.* Van Kleck, 7 Johnson, 508; Lawrence's Brief, 149–216.)

I respectfully refer the court to my brief, already filed, for a discussion of the joint resolution of April 10, 1869, and the "Thayer act."

WM. LAWRENCE,
OF COUNSEL.

Suppose the proviso had excluded the Osage lands by name and had read "The Osage reservation is excluded from the operations of this act" The railroad Companies could still claim the land with precisely the same force that they do now. Because they say that when the act "operated" the Osage reservation had ceased to exist and therefore the proviso could not except it. That is to say, it is impossible by any words to exclude lands from the operations of a land grant if the railroad company only waits long enough before building its road.